

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

STUDENTS FOR FAIR ADMISSIONS,)
Plaintiff,)
vs.) Civil No.
THE UNITED STATES NAVAL) 1:23-cv-2699-RDB
ACADEMY, ET AL.,)
Defendants.) September 17, 2024
10:03 A.M.

THE TRIAL IN THE ABOVE-ENTITLED MATTER CONTINUED
BEFORE THE HONORABLE RICHARD D. BENNETT

A P P E A R A N C E S

On Behalf of the Plaintiff:

ADAM K. MORTARA, ESQUIRE
PATRICK STRAWBRIDGE, ESQUIRE
J. MICHAEL CONNOLLY, ESQUIRE
CAMERON T. NORRIS, ESQUIRE
R. GABRIEL ANDERSON, ESQUIRE
THOMAS R. MCCARTHY, ESQUIRE

On Behalf of the Defendant:

JOSHUA E. GARDNER, ESQUIRE
CATHERINE M. YANG, ESQUIRE
ANDREW E. CARMICHAEL, ESQUIRE
JOHN ROBINSON, ESQUIRE
MEDHA GARGEYA, ESQUIRE
CHRIS E. MENDEZ, ESQUIRE

Also Present:

EDWARD BLUM, STUDENT FOR FAIR ADMISSIONS
BRUCE LATTA, NAVAL ACADEMY
TRACEY URBAN, PARALEGAL
LINDSEY O'CONNOR, PARALEGAL
MICHAEL PUSTERLA, IT

(Computer-aided transcription of stenotype notes)

Reported by:

Ronda J. Thomas, RMR, CRR

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1 (10:03 a.m.)

2 **THE COURT:** Good morning, everyone. You all may be
3 seated. Sorry to keep you waiting for just a few minutes. I
4 think in the interest of caution, I prefer that we reswear the
5 witness at the beginning of each day.

6 **THE CLERK:** Please raise your right hand.
7 (Witness sworn.)

8 **THE CLERK:** Thank you. You can have a seat.

9 **THE COURT:** Thank you, Ms. Herndon.
10 And, Ms. Yang, before we start -- this can be actually
11 stated right in the presence of the witness.

12 Mr. Robinson, yesterday you raised an issue that I want to
13 clarify on the ruling here with respect to the matter of
14 hearsay implications in expert reports. And my ruling,
15 essentially under Rule 703, is that -- first of all, experts
16 can rely upon admissible hearsay if they testify.

17 And I think the principle I was trying to state -- and we
18 found the Fourth Circuit case -- *Humphreys & Partners*
19 *Architects* 790 F.3d 532, a Fourth Circuit opinion in 2015.

20 To the extent that an expert does not testify on the
21 contents of a report, it may be hearsay; but in the context of
22 a bench trial -- under certain principles and in the context of
23 a bench trial, I'm presumed to ignore inadmissible evidence
24 anyway. And, quite frankly, I don't take much into account if
25 they haven't testified to it, but it isn't really hearsay.

1 And I think in the context of this case as to both sides,
2 to the extent that experts testify, we can't try to splice
3 through every expert report in terms of what they did or didn't
4 say. The reports will come into evidence. They may or may not
5 be subject to cross-examination, and I will treat them
6 accordingly if there's been no testimony. But they're not
7 barred by inadmissible hearsay. But that's the basis of my
8 ruling.

9 **MR. ROBINSON:** Thank you.

10 **THE COURT:** And thank you for raising that.

11 Mr. Mortara, from your point of view, you understand what
12 the ruling is?

13 **MR. MORTARA:** We understand it and agree with it.

14 **THE COURT:** Yeah, so that's the point. We're not
15 going to have to waste a lot -- whatever experts testify on
16 either side, the reports are going to come in. They'll be
17 cross-examined. And to the extent that they offer testimony on
18 it, that's one matter; and to the extent that they don't,
19 that's another matter. And I'll judge it accordingly.

20 So with that clarification, we're ready to proceed,
21 Ms. Yang. Sorry to slow you up there.

22 - - -

23 **CROSS-EXAMINATION (Continued)**

24 - - -

25 **BY MS. YANG:**

1 Q. Good morning, Ms. Hwang. Welcome back.

2 A. Good morning.

3 Q. Let's continue talking about nominations. Yesterday
4 plaintiff's counsel asked you about nomination assists and
5 whether that's a way that the Naval Academy has some control
6 over which candidates Congress nominates.

7 Do you remember those questions?

8 A. Yes.

9 Q. In response, you said that some members of Congress say
10 no; is that right?

11 A. Yes.

12 Q. In those instances, has the Naval Academy exercised any
13 control over candidates getting nominations?

14 A. We try to seek other categories of nominations if the
15 office that we requested said no.

16 Q. And, ultimately, is the Naval Academy able to make those
17 determinations about whether a candidate receives a
18 congressional nomination?

19 A. No, not a congressional nomination.

20 Q. You also said in response to Mr. Mortara's questions that
21 some members of Congress will say yes when you make a
22 nomination assist request, correct?

23 A. Yes.

24 Q. When members of Congress say yes to a nomination assist
25 request, who made the decision to say yes?

1 A. The staffer ultimately is the one that I am communicating
2 with, but oftentimes the staffer is running it by their
3 nominations board. They may not reconvene the whole entire
4 board, but the staffer oftentimes does show the request to the
5 nomination board, and then ultimately the congressman or the
6 senator would have to okay adding that nomination assist
7 request to their slate.

8 Q. In those cases, did the Naval Academy make that decision
9 for the member of Congress?

10 A. No.

11 Q. And just so we're all on the same page, does the Naval
12 Academy pursue any nomination assists because of a candidate's
13 race or ethnicity?

14 A. No.

15 Q. Let's look back at Defendants' Exhibit 91, which we looked
16 at yesterday and is already in evidence. And this'll be Tab 2
17 in your binder, Ms. Hwang. It's also up on the screen.

18 The first bullet on this page encourages students to apply
19 early for congressional nominations and to apply to all
20 nomination sources they can.

21 Why is this encouraged?

22 A. We tell the students to apply for nominations because
23 oftentimes the nominations deadlines set by the congressional
24 offices are sometime in the fall time frame. So if they are
25 going off the Naval Academy's application deadline, which is

1 January 31st, if they wait until January 31st to apply for
2 nominations, then they will have already missed the deadlines
3 for those congressional nomination applications.

4 And then the reason that we tell them to try to seek
5 nominations from every source that they're eligible for is
6 because it just allows them to compete for an offer of
7 appointment in every category of nomination that they have.

8 So it would not necessarily make them a more competitive
9 candidate for admissions, but the more nominations they have,
10 the more times they can compete for an offer of appointment to
11 the Naval Academy.

12 Q. So when a candidate has multiple nominations -- so, for
13 example, a nomination from their congressperson, a nomination
14 from their senator, a service-connected nomination -- can you
15 walk the Court through how the slate review committee makes a
16 decision on that candidate?

17 A. Sure. So it would depend on the method of nomination that
18 those -- that the congressperson and the senator submitted. If
19 any of those slates are principal slates, then obviously it's
20 kind of tying our hands in that we would have to look at the
21 principal nominee.

22 If this particular candidate was a principal nominee on,
23 for example, the senator slate but then on the congressperson's
24 slate it was a competitive slate, then we would take that
25 candidate on the senator's slate because that candidate is the

1 principal of the senator's slate. But if they are both
2 competitive slates, then we are pulling up both slates at the
3 same time to kind of compare all of the nominees on both slates
4 to see where the best offers on each slate can go to.

5 There is overlap in multiple candidates at times. And so
6 if we are taking a candidate on one slate, then that would kind
7 of remove them from the other slate because we're already
8 picking that candidate up on one of slates so that on that
9 other slate, it allows us to then look at other candidates to
10 make another slate winner decision.

11 So we kind of have to pull up all of the slates together
12 at the same time to kind of look at the slates together, the
13 candidates together, to see where they fall on each slate. And
14 then if the candidate happens to have a service-connected
15 nomination, a presidential nomination, for example, if the
16 student is not being picked up on either of the congressional
17 slates, then we can look at the student on the presidential
18 nomination list as well.

19 Q. Thank you. And --

20 THE COURT: Ms. Yang, this might be an appropriate
21 point under Rule 614 for me to ask a question apropos at this
22 stage to Ms. Hwang just so I can clarify.

23 Just clarify again for me, Ms. Hwang, what is -- in terms
24 of the order of review for the admissions board and the slate
25 review committee, again go over for me in terms of the

1 chronology on that.

2 THE WITNESS: Yes. So the admission --

3 THE COURT: You mentioned the slate review committee;
4 so I thought this was an appropriate point to ask now. What is
5 the chronology here; that is, before or after the admissions
6 board?

7 THE WITNESS: The slate review commission and the
8 admissions board, they're actually kind of happening
9 concurrently.

10 THE COURT: Okay.

11 THE WITNESS: So we can review a slate before those
12 nominees have gone before the admissions board, and --

13 THE COURT: Okay. It may be that they go before the
14 admissions board before you review it, correct, as well?

15 THE WITNESS: Yes. Correct.

16 THE COURT: Okay. So what is the ordinary chronology,
17 if there is an ordinary chronology, in terms of the timing of
18 the slate review committee and the admissions board?

19 THE WITNESS: The admissions board starts meeting in
20 late August on a weekly basis. And then the congressional
21 slates don't start coming in until, I would say, probably
22 October on the early side, but more November, December.

23 The congressional nomination deadline is January 31st; so
24 the office just has to submit their nominations to us by
25 January 31st. So since the admissions board is starting to

1 meet in August, there's more records going to the board.

2 Obviously, it's starting in August.

3 And then as the slates start coming in, that's when we
4 start reviewing those slates. So it can be possible that those
5 nominees have already been to the admissions board. But, if
6 not, then we identify those nominees to get to the admissions
7 board.

8 **THE COURT:** Thank you. That's why I asked that
9 question just then because I thought that was an appropriate
10 time from what you've just said, meaning that, to the extent
11 that a candidate has passed the admissions board but there is
12 an issue as to nominations, then that's the time when you may
13 try to see on what level you get the slate review and have that
14 person get that nomination. So you may have flagged a good
15 candidate --

16 **THE WITNESS:** Yes.

17 **THE COURT:** -- for admission, but he or she doesn't
18 have the nomination yet --

19 **THE WITNESS:** Correct.

20 **THE COURT:** -- so you basically seek to find a
21 nomination for them, if possible, correct? Is that a fair
22 comment?

23 **THE WITNESS:** Early on, I probably wouldn't do a
24 nom-assist -- nomination assist. But when the students do go
25 to the admissions board early on in the cycle, we can offer

1 conditional offers --

2 THE COURT: Sure.

3 THE WITNESS: -- or letters of assurance. And so that
4 is kind of flagging to the office the student has already been
5 to the board, they already have a conditional offer. One of
6 the conditions that they have to meet in order to receive a
7 fully qualified offer is a nomination. So that kind of flags
8 the office, like, hey, Naval Academy already screened this
9 candidate, already has a conditional offer; so let's nominate
10 them.

11 THE COURT: Okay. All right. Thank you very much.

12 THE WITNESS: You're welcome.

13 THE COURT: I'm sorry, Ms. Yang. Thank you.

14 MS. YANG: No problem. Thank you, Your Honor.

15 BY MS. YANG:

16 Q. And since the Court asked you a couple questions about the
17 nomination assist, could you remind the Court, please, the
18 circumstances in which you would pursue a nomination assist.

19 A. Sure. The typical times that I would pursue nomination
20 assists are for the recruited athletes, occasionally our
21 students that are in the preparatory programs that did not
22 obtain a new nomination to matriculate in the following Naval
23 Academy class, and then students who already have conditional
24 offers but were not able to obtain a nomination on their own.

25 Q. And I believe yesterday you said that each admissions

1 cycle, you pursue a nomination assist for approximately 20 to
2 30 students. Is that correct?

3 A. Yes.

4 Q. All right. Thank you.

5 Let's talk about the medical qualification requirement.
6 Does your portfolio also cover medical waivers?

7 A. Does our portfolio?

8 Q. Does the portfolio within nominations and appointments, do
9 the areas that you cover also include medical waivers?

10 A. Yes.

11 Q. Can a candidate receive a fully qualified offer without
12 being medically qualified?

13 A. No.

14 Q. Is the first step for medical qualification to go through
15 the Department of Defense medical board?

16 A. Yes.

17 Q. Is that an entity within the Naval Academy?

18 A. No.

19 Q. Each year does the Department of Defense medical board
20 disqualify candidates?

21 A. Yes. And can I just clarify?

22 It's the Department of Defense Medical Examination Review
23 Board; so DoDMERB is their acronym.

24 Q. Understood. Thank you very much.

25 **THE COURT:** I was going to say we've gone too far

1 without having an acronym here. We can't proceed. I mean,
2 there's acronyms in all government matters. So we'll try to
3 define it for the public, but I know we're going to get lost in
4 acronyms eventually. But that's okay.

5 MS. YANG: I was trying to avoid the acronyms, but it
6 comes up.

7 BY MS. YANG:

8 Q. Each year does the Department of Defense Medical
9 Examination Review Board disqualify candidates?

10 A. Yes.

11 Q. Do all candidates who are disqualified by the DoDMERB get
12 processed for a medical waiver?

13 A. No.

14 Q. For which candidates does the Naval Academy initiate the
15 medical waiver process?

16 A. So students who have a pretty high whole-person multiple.
17 So students that we expect to be QA candidates. Students that
18 already have a conditional offer. And then any other students
19 that we expect to make an offer to -- so potential slate
20 winners, any recruited athletes, and then any other students
21 that are directed by the dean of admissions.

22 Q. Your answer just now referred to another acronym, QA. Do
23 you mind just explaining to the Court what a QA is.

24 A. Yes. A qualified alternate.

25 Q. Once a medical waiver has been initiated, who at the Naval

1 Academy reviews that information?

2 A. Our admissions medical officer.

3 Q. Is that individual a medical doctor?

4 A. Yes.

5 Q. Is there any guidance they apply when reviewing the
6 medical waiver information?

7 A. Yes.

8 Q. What is that guidance?

9 A. There is a BUPERS instruction that the admissions medical
10 officer kind of goes by. The admissions medical officer makes
11 their recommendations based on their ability to commission, you
12 know, their likelihood of succeeding at the Naval Academy with
13 whatever medical disqualification they may have. And so she
14 makes her recommendation for a waiver or no waiver based on
15 those guidelines.

16 Q. Your answer just now, I think, referred to perhaps another
17 acronym, BUPERS. Can you explain what that is.

18 A. I -- actually -- something personnel. I actually don't
19 know.

20 Q. That's all right.

21 Does the Naval Academy track the status of medical
22 waivers?

23 A. Yes.

24 Q. What information does that tracker contain?

25 A. The reason that they are being processed for a waiver.

1 So, for example, they're either high multiple or they have a
2 conditional offer. Their candidate number, their last name,
3 first name, gender, and then their disqualification as well as
4 when -- the date of when the medical waiver was initiated.

5 Q. Does the medical waiver tracker contain information about
6 the candidate's race or ethnicity?

7 A. No.

8 Q. Does the Naval Academy consider a candidate's race or
9 ethnicity when deciding whether to grant or deny a medical
10 waiver?

11 A. No.

12 Q. All right. So we've talked about a number of places where
13 the Naval Academy doesn't consider race. When the Naval
14 Academy does consider race in admissions, can you explain
15 generally how a race is taken into account.

16 A. Sure. So race is -- it can just be one of many
17 nondeterminative factors in reviewing the whole entire
18 application based on a holistic review. Their race and
19 ethnicity, it can just help us kind of paint a better picture
20 of the overall candidate. A student may have certain life
21 experiences or overcome hardship or something, and that race or
22 ethnicity may contribute or not to whatever life experiences
23 that they may have.

24 And so it kind of just helps us to paint a better picture
25 of the overall candidate and just kind of serves as one data

1 point in the overall application review.

2 Q. To what extent do candidates receive offers based solely
3 on their race or ethnicity?

4 A. Never.

5 Q. Does the Naval Academy use any racial quotas when making
6 admissions decisions?

7 A. No.

8 Q. Plaintiff's counsel yesterday asked you some questions
9 about the criteria for when the Naval Academy would consider
10 ending the use of race in admissions.

11 Do you remember those questions?

12 A. Yes.

13 Q. Are you the person at the Naval Academy who would
14 determine those criterias?

15 A. No.

16 Q. Who is?

17 A. Probably the superintendent and/or the dean of admissions.

18 Q. Does the Naval Academy make any offers to students who are
19 not qualified?

20 A. No.

21 Q. Are standardized test scores the only thing the Naval
22 Academy looks at when making offer decisions?

23 A. No.

24 Q. Is the whole-person multiple score the only thing the
25 Naval Academy looks at when making offer decisions?

1 A. No.

2 Q. Why aren't those the only things that the Naval Academy
3 looks at?

4 A. So the whole-person multiple, it just starts as a good
5 guide to kind of tell us the qualification -- how qualified, I
6 guess, a student might be. Test scores are also just one of
7 many factors in the application.

8 Ultimately, there are many things that are not factored
9 into the whole-person multiple, many subjective factors that
10 can be debated at the board. And so a whole-person multiple
11 score that is generated by the system, it starts as a good
12 starting point and a good guide but does not include all the
13 subjective matters that can be debated by the admissions board.

14 And then overall, the admissions board -- we look for
15 students from a holistic review; so not just test scores, not
16 just transcripts, but we want to look at the whole entire
17 application to see what other factors contribute to the makeup
18 of this candidate, if this candidate shows potential to succeed
19 as a midshipman and to be a great future naval officer.

20 So we just want to be able to factor in all of those
21 things that may not necessarily be reflected on a high school
22 transcript or the résumé, essentially.

23 MS. YANG: Thank you. I have nothing further at this
24 time.

25 THE COURT: Thank you, Ms. Yang. Thank you very much.

Any redirect on this, Mr. Mortara?

MR. MORTARA: Yes, Your Honor.

THE COURT: Go right ahead.

MR. MORTARA: Your Honor, may I proceed?

THE COURT: Definitely.

REDIRECT EXAMINATION

BY MR. MORTARA:

Q. Hello again, Ms. Hwang.

A. Good morning.

Q. You talked with Ms. Yang about nom-assist, said race wasn't used, but nom-assists were sometimes for people that got LOAs, or letters of assurance, right?

A. Yes.

Q. Race can be a reason someone gets an LOA, correct?

A. Correct.

Q. We've been using the phrase "congressional nominations," but there are other nomination sources, right?

A. Yes.

Q. The vice president, for example, has nominations?

A. Yes.

Q. In this administration, has the Academy exercised control in part over who the vice president nominates?

A. I would -- I would say no.

Q. Didn't the vice president ask you to forward names for potential nomination?

1 A. Yes.

2 Q. And did the vice president ask you to use race in
3 selecting those names?

4 A. Yes.

5 Q. What was the vice president's request?

6 A. The vice president specifically requested students --
7 female, students of diversity from California, and any student
8 who may have an unusual life experience.

9 Q. And did the Academy do its best to meet the vice
10 president's requests?

11 A. Yes.

12 Q. I want to go back to Plaintiff's Exhibit 491 which you
13 discussed with Ms. Yang, also with me. I asked you yesterday
14 what's the date of this document? And you said you weren't
15 sure. Could you look at the second slide.

16 Does this help you determine the date of the document?

17 A. No.

18 Q. When did -- how do you pronounce Mr. Kacher's last name?

19 A. Oh. Admiral Kacher.

20 Q. Yes. When did he become the superintendent?

21 A. Ooh. Um...

22 Q. This is not a quiz. I have another document that will
23 help you later.

24 A. Okay.

25 **THE COURT:** What exactly -- plaintiff's exhibit what

1 on the screen? I'm sorry.

2 **MR. MORTARA:** 491, Your Honor.

3 **THE COURT:** Thank you. Thank you.

4 **BY MR. MORTARA:**

5 **Q.** Let's go back to a slide you talked with Ms. Yang and with
6 me. This is the superintendent's guidance in the middle. It
7 starts at 738, and then we went to 745. Remember, it says
8 race, ethnicity, or gender should not be the basis for points
9 in favor of an applicant but it can be considered as one of
10 many factors.

11 Do you remember that?

12 **A.** Yes.

13 **Q.** Because with Ms. Yang -- with me I asked you, "This is
14 telling the board that it cannot award a RAB or a bonus to the
15 WPM for race but can consider it as one factor in the board's
16 overall work?"

17 And you said yes.

18 Do you remember that?

19 **A.** Yes.

20 **Q.** You did not clarify or limit that by saying it can only be
21 used in early notification, did you?

22 **A.** Correct. I did not say that.

23 **Q.** You did not tell me that at that time, but you did tell
24 Ms. Yang that, right?

25 **A.** Yes, that is correct.

1 MS. YANG: Objection, Your Honor. This is --

2 THE COURT: Overruled. Overruled.

3 BY MR. MORTARA:

4 Q. She asked you, "Can you explain why the superintendent's
5 guidance to the admissions board says they can consider race as
6 one of many factors if the board does not consider race in
7 determining a candidate qualified or not qualified?"

8 And you gave a long answer that included that race cannot
9 be used for qualification, but it can be used for early
10 notification and prep pool.

11 Do you remember that?

12 A. Yes.

13 Q. Where does it say that on this slide?

14 A. On the slide, I guess it does not say that.

15 Q. Now, do you consider it to be important that the board
16 cannot consider race in deciding whether a candidate is
17 qualified?

18 A. Yes.

19 Q. Is this important instruction -- it must be somewhere in
20 this long training document, right?

21 A. I'm sorry. Can you say that again.

22 Q. This important instruction, is it somewhere in this
23 training document? It's quite a long document. We haven't
24 been through the whole thing.

25 A. Yes.

1 Q. When did you first learn that the board could not consider
2 race in determining qualification?

3 A. I guess in 2014. I've always received the same training
4 as well.

5 Q. Can you go to -- oh, who is Christie Munnelly?

6 A. The former director of candidate guidance.

7 Q. She also had your job before you did, correct?

8 A. Yes, correct.

9 Q. She worked in admissions at the Academy for a total time
10 longer than you, correct?

11 A. I don't know that, actually.

12 Q. Can you go to the page that is Bates-numbered 770. It's
13 quite a bit further after where you are.

14 Do you have it?

15 A. Yes.

16 Q. This is a presentation as part of the board training given
17 by Ms. Munnelly, correct?

18 A. Yes.

19 Q. Can you look at the second page. And maybe now you can
20 tell me the date of this training.

21 A. 2023.

22 Q. So this is training for the admissions board offered by
23 Ms. Munnelly, correct?

24 A. Yes.

25 Q. And this was part of her job responsibility at the time,

1 correct?

2 A. Yes.

3 Q. Would you please turn to the slide labeled 782. It's
4 entitled "Admissions Board Review."

5 A. Okay.

6 Q. This is still part of Ms. Munnelly's presentation,
7 correct?

8 A. Yes.

9 Q. If you go three slides -- well, let's stop at 84 for the
10 Court. This shows who the admissions board was/is at the time
11 in 2023, correct?

12 A. Yes.

13 MR. MORTARA: And that's Bates Number 784 for the
14 record, Your Honor.

15 BY MR. MORTARA:

16 Q. And now at 785 --

17 THE COURT: Bates Number 774?

18 MR. MORTARA: 784.

19 THE COURT: 784. Okay.

20 BY MR. MORTARA:

21 Q. And now at 785 there's a slide titled "Admissions Board,"
22 subtitled "What does the admissions board do?"

23 Do you see that?

24 A. Yes.

25 Q. And the first thing it says, "Determine qualification for

1 admission."

2 Do you see that?

3 A. Yes.

4 Q. And it says, "Whole-person qualification gives the
5 opportunity to compete for an appointment."

6 Do you see that?

7 A. Yes.

8 Q. And includes consideration for prep school programs, no
9 separate application.

10 Do you see that?

11 A. Yes.

12 Q. Is this an adequate description of what the board does?

13 A. Yes.

14 Q. Now, there's several slides about the whole-person
15 multiple that follow this. Just take a look and we'll go
16 through them.

17 The first one is 786. And I just want you to confirm that
18 the subject matter of the next several slides is the
19 whole-person multiple. Then there's something about
20 text-flexible policy. So Ms. Munnelly is describing the
21 text-flexible policy that was then in place, correct?

22 A. Yes.

23 Q. Then there's a discussion of academics, followed by
24 subjective evaluations, correct?

25 A. Yes.

1 Q. Then there's ECAs and physical fitness, correct?

2 A. Yes.

3 Q. Then there's a slide numbered 97 --

4 Bates-numbered, for the Court, 792.

5 -- "Assessment of the Whole Person." This is an
6 instruction about assessing the whole person for purposes of
7 the whole-person qualification the board is instructed to do,
8 correct?

9 A. Yes.

10 Q. And the first bullet is "Unique life experiences." It has
11 subbullets, "Experiencing living in another culture overseas,
12 first-generation American, first-generation college student."

13 That is a factor the board considers in determining
14 qualification, isn't it?

15 A. Yes.

16 Q. The third bullet is "Language fluency. English as a
17 second language."

18 That is also a factor the board considers in determining
19 qualification, correct?

20 A. Yes.

21 Q. The fourth bullet is "Significant adversity and hardship,"
22 also a factor the board determines in considering
23 qualification, correct?

24 A. So all of these points, I don't necessarily say that -- I
25 think I would need a little bit more clarification. When

1 you're saying whether or not they're qualified, a student
2 having any of these or not having any of these wouldn't
3 necessarily make them qualified or not qualified.

4 Q. Could they be a factor?

5 A. They could be a factor, yes.

6 Q. Yes. Is familiarity with the Academy and Naval service,
7 including personal military service and family military
8 background, a factor that could help determine qualification?

9 A. Yes.

10 Q. And same for candidates from underrepresented districts.
11 Is that a factor?

12 A. Yes.

13 Q. The second bullet says, "Ethnic heritage, racial and
14 ethnic diversity."

15 That is also a factor the board uses to determine whether
16 someone is qualified or not, is it not?

17 A. So all of these things are to include ethnic heritage,
18 racial, and ethnic diversity. None of these things on its own
19 will determine whether or not a student is qualified or not.
20 It just all factors into their whole-person assessment.

21 So many of these things combined can say whether or not a
22 student is qualified, but I wouldn't say any of these things
23 individually -- significant adversity/hardship, for example,
24 just because a student experienced some type of hardship, we
25 wouldn't necessarily say that they're qualified to -- you know,

1 if you want to say a pity qualification or anything.

2 Or on the other side, just because a student experienced
3 adversity, we wouldn't say that that student is not qualified
4 just because of whatever judgment that the briefer would want
5 to make that they would not be able to recover in a stressful
6 environment or something like that.

7 So none of these by itself, I would say, is -- will
8 determine the final qualified or not qualified.

9 Q. Thank you, Ms. Hwang. But each of them -- all of them
10 could be a factor in determining whether someone is qualified,
11 correct?

12 A. It can paint the picture of a student; so I guess yes.

13 Q. Did Ms. Munnelly put in her presentation only use race for
14 early notify and prep pool?

15 A. No.

16 Q. She did not tell the board in this presentation the things
17 you told Ms. Yang yesterday, did she?

18 A. Correct.

19 Q. Now, you said the prohibition on using race in
20 qualification is somewhere in that PowerPoint. Take as long as
21 you want and try to find it.

22 A. In this particular one?

23 Q. Correct. Yes, please.

24 A. I'm not sure if I would have said -- or maybe I did. And,
25 if so, then it probably was a mistake. I actually -- I don't

1 think that that information would be in the director of
2 candidate guidances brief.

3 Q. The entire document consists of multiple presentations,
4 correct, Ms. Hwang?

5 A. I can check. Got it.

6 I thought it might have been in the dean of admissions
7 guidance, but I'm not seeing it in this particular one either.

8 Q. You'll notice -- did you start at the beginning of the
9 document?

10 A. Yes.

11 Q. There's some black pages. Could it be in the black pages?

12 A. Perhaps, but I -- I can't say for sure.

13 Q. But you're pretty sure it's somewhere in the document,
14 right?

15 A. I believe I did read it. I just couldn't remember where I
16 remember reading it from.

17 MR. MORTARA: Thank you, Your Honor. We have no more
18 questions, but I have a motion.

19 THE COURT: Yes. Thank you.

20 Any recross on this, Ms. Yang?

21 MS. YANG: Very briefly.

22 THE COURT: All right. Go right ahead.

23 **RECROSS-EXAMINATION**

24 **BY MS. YANG:**

25 Q. Ms. Hwang, is this document that plaintiff's counsel just

1 used with you --

2 **THE COURT:** All right. Just so we're clear on the
3 record, this is -- Plaintiff's Exhibit No. 491 is the document
4 of which we're speaking, including the Bates-stamped numbers to
5 which you made reference, correct, Mr. Mortara?

6 **MR. MORTARA:** That is correct, Your Honor.

7 **THE COURT:** All right. And it is an admissions board
8 training document. And that's the document we're dealing with
9 here.

10 Go ahead. You may proceed with your questions.

11 **BY MS. YANG:**

12 **Q.** P491, is this document the only training the admissions
13 board receives?

14 **A.** No.

15 **Q.** Mr. Mortara showed you what I believe is page 90.

16 Errol, could we pull up page 90 of P491.

17 All right. This is one of the slides that Mr. Mortara
18 showed you, right?

19 **A.** Yes.

20 **Q.** And let's now look at page 101. Page 101 is not a slide
21 that Mr. Mortara showed you, correct?

22 **A.** Correct.

23 **Q.** And here, the slide has a title, "Admissions Board
24 Options," qualified with a subbullet, "Eligible for early offer
25 of appointment" --

1 **MR. MORTARA:** Objection, Your Honor. Leading.

2 **THE COURT:** Overruled.

3 **BY MS. YANG:**

4 **Q.** Another option is "Not Qualified," with a subbullet for
5 consideration for a preparatory school?

6 **A.** Yes.

7 **Q.** And a third option is "Defer. More information needed."
8 Do you see those?

9 **A.** Yes.

10 **Q.** Is -- for the first category, is everyone who is
11 determined to be qualified then eligible for an early offer of
12 appointment?

13 **A.** No.

14 **Q.** And, likewise, is everyone who is not qualified eligible
15 for consideration for a preparatory school?

16 **A.** No.

17 **Q.** Now, I believe you told Mr. Mortara that the early offer
18 of appointment, also known as a conditional offer or a letter
19 of assurance, that is one place where the admissions board
20 could consider race or ethnicity among the many factors in
21 making that recommendation, correct?

22 **A.** Yes.

23 **Q.** And, likewise, under "Not qualified," the subconsideration
24 for preparatory school, I believe you also told Mr. Mortara
25 that that's another place where race or ethnicity could be

1 among the many factors considered?

2 A. Yes.

3 Q. What about with respect to determining someone qualified
4 or not qualified? Can the admissions board consider a
5 candidate's race or ethnicity in determining them qualified or
6 not qualified?

7 A. No.

8 MS. YANG: Thank you.

9 THE COURT: All right. With that, you have a motion.
10 Any further questions at this point from you, Mr. Mortara?

11 MR. MORTARA: No, Your Honor.

12 THE COURT: From -- Ms. Yang, from you?

13 MS. YANG: No, Your Honor.

14 THE COURT: All right. Ms. Hwang, thank you very
15 much. There's a sequestration as to witnesses; so you'll need
16 to leave the witness stand now. You shouldn't discuss your
17 testimony with anyone else in the event you're called back to
18 the witness stand. And my recommendation is why don't you stay
19 out in the vestibule area for a period of time.

20 THE WITNESS: Okay.

21 THE COURT: Thank you very much.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you very much. Just be outside.
24 Thank you.

25 Yes, Mr. Mortara?

1 **MR. MORTARA:** Good morning again, Your Honor.

2 **THE COURT:** Good morning.

3 **MR. MORTARA:** I think Your Honor probably apprehends
4 that we've had some at least inconsistent testimony about
5 whether race is used as a factor in determined qualifications,
6 some elicited by the Justice Department and some elicited by me
7 in an adverse direct examination.

8 **THE COURT:** Oh, sure.

9 **MR. MORTARA:** The witness testified that she was quite
10 sure that this instruction against considering race in
11 qualification was present in the document I showed her. She
12 then said it's was quite possible it was behind the redactions.

13 **THE COURT:** The document being Exhibit 491?

14 **MR. MORTARA:** That is correct.

15 She then testified it was possible it was hidden behind
16 redactions made by the Department of Justice. It is Entry 1 on
17 their privilege log. They gave a privilege objection to that.

18 The witness has now testified that an instruction exists
19 behind a privilege redaction. That is sword/shield. That is
20 waiver. No objection occurred. We would like the document.

21 Thank you, Your Honor.

22 **THE COURT:** Which document are you seeking?

23 **MR. MORTARA:** This is Plaintiff's Exhibit 491,
24 unredacted.

25 **THE COURT:** So what I understand, the exhibit that

1 you've had on the screen is Exhibit 491. Just put it back up
2 on the screen again.

3 **MR. MORTARA:** Sure, Your Honor. Sorry.

4 **THE COURT:** All right. And that is the admissions
5 board training?

6 **MR. MORTARA:** Correct.

7 **THE COURT:** And the issue is here -- keep that back up
8 so it keeps clear for me. Thank you.

9 And so the point is that, as to that document, admissions
10 board training, you've received a redacted portion of it, and
11 there was an assertion of privilege as to other portions of it.
12 And your contention is, in light of witness's testimony here,
13 there's been a waiver of that privilege and you would like the
14 complete admissions board training document no longer redacted?

15 **MR. MORTARA:** Because of the waiver as to the subject
16 matter behind the redactions --

17 **THE COURT:** I understand.

18 **MR. MORTARA:** -- that is a scope waiver. And you can
19 see the redactions. It is USNA admissions legal overview
20 starting at 700, and there are several pages redacted.

21 **THE COURT:** Okay. That's fine. I understand --
22 again, put it up on the screen because I don't need to look at
23 a redacted page on my screen. So if you'll --

24 **MR. MORTARA:** Excuse me, Your Honor.

25 **THE COURT:** That's all right.

1 **MR. MORTARA:** I'm almost as good as Errol and Mike.

2 **THE COURT:** Ms. Yang, I'll be glad to hear from you on
3 this.

4 **MS. YANG:** Thank you, Your Honor. Unfortunately, I
5 need to correct a misstatement by Mr. Mortara just now.

6 He just said that the witness has now testified that an
7 instruction exists behind a privilege redaction that is sword
8 and shield.

9 That is not what the witness testified to. She said
10 perhaps it is; I don't know that. She also said in response to
11 my questions that the admissions board receives other training
12 beyond this document.

13 This is not an issue of a waiver with respect to
14 privilege, certainly not with respect to the scope of
15 attorney-client privilege.

16 **THE COURT:** What are the extent of the redactions to
17 this document that were handed over to the plaintiff?

18 **MS. YANG:** So I don't know precisely the page number,
19 but, Your Honor, if plaintiff's counsel could be so kind as to
20 turn to that first slide right before --

21 **THE COURT:** Do you have a copy of the document
22 unredacted?

23 **MS. YANG:** We have it in our system, yes, Your Honor.

24 **THE COURT:** All right. Okay.

25 **MS. YANG:** But what I can tell you --

1 **THE COURT:** Just so it's clear, I would like to be
2 able to see the document in question and the extent to which
3 there are redactions in order to address the motion as to --
4 essentially, the motion is that there's been a waiver of an
5 assertion of a privilege because of discussions behind a
6 document, and I'd like to see the extent to which privilege was
7 asserted as to the document.

8 **MS. YANG:** Certainly, Your Honor. So we can put these
9 up on this slide --

10 **THE COURT:** We don't need to do that. We're going to
11 do it the old-fashioned way.

12 **MS. YANG:** I understand. So we will --

13 **THE COURT:** It's just a matter of public -- if you've
14 asserted a privilege in discovery, clearly that privilege would
15 exist in terms of public dissemination as well. This is an
16 open proceeding. So the way to handle this is I just need to
17 go the old-fashioned way and look at the document myself and
18 make a determination as to whether or not there's a proper
19 assertion of privilege there, particularly in light of the
20 witness's testimony.

21 **MS. YANG:** I understand, Your Honor. We will print
22 off a hard copy for Your Honor.

23 **THE COURT:** Okay.

24 **MS. YANG:** In terms of just orienting the Court --
25 Errol, if we can put up Slide 5 of P491.

1 As Your Honor will see, this was part of a legal overview
2 parol presentation by the judge advocate general of the Naval
3 Academy, Captain Andrew House. He was agency counsel for the
4 Naval Academy at the time. And he provided a presentation in
5 which he discussed various aspects of the legal landscape.

6 Again, I just want to make very clear the witness did not
7 testify definitively that the instruction exists behind these
8 redactions. And, again, the witness acknowledged that the
9 admissions board --

10 **THE COURT:** Well, I understand. And the easiest
11 way -- and best and most thorough way to do this is, again, the
12 old-fashioned way. I will look at it myself and determine if
13 there's an appropriate assertion of privilege, having heard the
14 witness on the witness stand, and whether or not that -- to the
15 extent to which the plaintiff's counsel is entitled to the
16 document in light of the testimony here.

17 So that's the way we'll deal with it. Now, how quickly
18 can you get those printed materials for me? Because it's not a
19 matter of just doing it on the screen; I'll need -- how
20 difficult will that be?

21 **MR. MORTARA:** Your Honor, while they're conferring,
22 may I just make one brief point?

23 **THE COURT:** Sure.

24 **MR. MORTARA:** I obviously don't know what's behind
25 those. I asked the witness, "That instruction is in the

1 document, right?" She said, "Yes."

2 Then I asked her to spend quite a bit of time trying to
3 find it. She could not. I suggested to her it might be behind
4 the redacted portions. No objection occurred. And she said,
5 "It's possible." I don't know what's there, obviously.

6 **THE COURT:** That's fine, Mr. Mortara. And I
7 understand what your objection is, and we'll take a look at it.

8 So Ms. Hwang will just need to remain available. She's
9 been excused from the witness stand. I've asked her to stay
10 here in the vestibule, my suggestion is, until your team can
11 come up with the written materials. And during a break, I'll
12 take a look at it in terms of the assertion of privilege here,
13 and we'll act accordingly.

14 What it means is that Mr. Mortara -- Mr. Mortara, I'm
15 pronouncing your name correctly, right?

16 **MR. MORTARA:** You are.

17 **THE COURT:** Mr. Mortara, to the extent that I
18 determine that there's been an appropriate assertion of
19 privilege and it has not been waived, your objection will be
20 overruled.

21 To the extent that I believe, in light of the testimony,
22 there's some waiver of privilege and there's no longer a basis
23 to assert a privilege as to some matters, I will rule
24 accordingly.

25 And if that's the case, you'll be permitted to see that

1 portion that was redacted. And if you desire to call the
2 witness back to the witness stand, you may do so at your own
3 time. You don't have to do it immediately. Ms. Hwang will
4 have to be available to be called back to the witness stand if
5 you so choose.

6 **MR. MORTARA:** Understood, Your Honor. And if I may
7 limit the motion just to assist the Court.

8 **THE COURT:** Sure.

9 **MR. MORTARA:** If the injunction against using race in
10 deciding qualifications does not appear in the redacted
11 portions, we would withdraw the motion. I strongly suspect it
12 does not because I don't believe it's anywhere in the document.
13 But if it is in there, we want it.

14 **THE COURT:** I understand. I understand. I think, in
15 terms of the context of this, just get the written materials
16 together. I'll look at it during the break or maybe during the
17 lunch hour. We can move forward, and that's fine.

18 **MS. YANG:** We will do that. Thank you, Your Honor.

19 **THE COURT:** All right. Thank you, Ms. Yang.

20 All right. With that, Mr. Mortara, your next witness.

21 **MR. MORTARA:** Mr. Strawbridge will call our next
22 witness.

23 **THE COURT:** Mr. Strawbridge, all right.

24 And the next witness is Dean Bruce Latta, correct?

25 **MR. STRAWBRIDGE:** Correct.

1 **THE COURT:** All right. Thank you.

2 Dean Latta, I know that you're a retired captain in the
3 Navy, sir. Do you go by Dean Latta or Captain Latta?

4 **THE WITNESS:** I currently go by Dean Latta.

5 **THE COURT:** I'm sorry?

6 **THE WITNESS:** Dean Latta, sir.

7 **THE COURT:** Okay. That's fine.

8 **MR. STRAWBRIDGE:** So the plaintiff does call Stephen
9 Bruce Latta.

10 **THE CLERK:** Good morning, sir. Please raise your
11 right hand.

12 (Witness sworn.)

13 **THE CLERK:** You can have a seat.

14 **MR. STRAWBRIDGE:** Just one moment, Your Honor, while I
15 distribute some materials.

16 **THE COURT:** All right. That's fine.

17 **THE CLERK:** If you can adjust that microphone and
18 speak directly into it. If you would spell and state your
19 first and last name for the record.

20 **THE WITNESS:** Stephen Latta, S-T-E-P-H-E-N, and my
21 last name is L-A-T-T-A.

22 **THE CLERK:** Thank you.

23 **MS. YANG:** Your Honor, may I approach to clear some
24 binders off?

25 **THE COURT:** Oh, sure, sure. We can clear some of

1 those binders off or I won't be able to see the witness.

2 Thank you, Ms. Yang.

3 MS. YANG: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. STRAWBRIDGE:

6 Q. Okay. Good morning, Dean Latta.

7 A. Good morning.

8 Q. My name is Patrick Strawbridge. We have met before, have
9 we not?

10 A. Yes.

11 Q. I represent Students for Fair Admissions in this case.

12 You have worked in the Academy admissions office since
13 2002, correct?

14 A. That's correct.

15 Q. And just so the Court understands, you are currently a
16 civilian employee of the Naval Academy?

17 A. I am, yes.

18 Q. You retired from active duty in 2006?

19 A. Yes.

20 Q. Having obtained the rank of captain?

21 A. Yes.

22 Q. Well, as the son of an Annapolis graduate and a 25-year
23 Navy man, thank you for your service on behalf of myself and
24 Students for Fair Admissions.

25 A. You're welcome.

1 Q. Notwithstanding your status as a civilian employee, you
2 would agree with me that you consider yourself bound by the
3 chain of command at the Naval Academy?

4 A. Yes.

5 Q. You report to the superintendent?

6 A. Yes.

7 Q. And the superintendent acts as the commanding officer of
8 the Naval Academy, correct?

9 A. Correct.

10 Q. I want to just briefly discuss your career. You graduated
11 from the Academy in 1978?

12 A. That is correct.

13 Q. You went on to fly P3s in the Navy, correct?

14 A. That's correct.

15 Q. And the P3 is an antisubmarine and surveillance aircraft?

16 A. Yes.

17 Q. What was your call sign?

18 A. Never had one.

19 Q. Never had one. Is that a more recent innovation?

20 A. No. It's just the P3 community fly with large crews.
21 Some crews have them, but a lot of us don't.

22 Q. Your career in the Navy eventually led you back to the
23 Academy, correct?

24 A. That's correct.

25 Q. As we discussed earlier, you were assigned to Annapolis in

1 2002 as the director of admissions?

2 A. That's correct.

3 Q. And as director of admissions, you were a deputy to the
4 dean of admissions at the time, correct?

5 A. That's correct.

6 Q. And you helped run the admissions staff and implement the
7 dean's policies?

8 A. Yes, I did.

9 Q. You also served as a member of the admissions board?

10 A. That's correct.

11 Q. You helped with the selection of candidates for admission?

12 A. That's correct.

13 Q. And at some point you were named the vice dean of
14 admissions, correct?

15 A. That's correct.

16 Q. Your responsibilities in that role were largely the same?

17 A. So I just had a little more supervisory capability. At
18 the time there was another Navy captain in the office. So in
19 addition to help running the staff and developing policies of
20 the dean of admissions, again, I oversaw the admissions board
21 and the other efforts of the officers and the civilians on that
22 staff.

23 Q. And about the time you retired from active duty in 2006,
24 that was when you were named the dean of admissions, correct?

25 A. Yes.

1 Q. And you have served as dean of admissions ever since?

2 A. That's correct.

3 Q. So by my count, you have served in the Academy's
4 admissions office for 22 years?

5 A. That's correct.

6 Q. The entire time that you've been there, the Academy has
7 used race in some way as a factor in its admissions decisions,
8 correct?

9 A. That would be correct.

10 Q. And we're going to talk a little bit about that this
11 morning, as you might imagine, but I want to start with a
12 simple question. And that is you agree with me, don't you,
13 that the Academy has never modeled what its class would look
14 like if race was not used in its admissions process?

15 A. That's correct.

16 Q. And, in fact, the superintendent of the Naval Academy said
17 the same thing to the assistant secretary of the Navy in 2022,
18 correct?

19 A. Yes.

20 Q. And I will direct your attention to P138. It's here on
21 the screen. This is an email that contains you on the
22 correspondence, correct?

23 A. Correct.

24 Q. And it indicates that this is communications that were
25 being sent by the Academy back to the assistant secretary of

1 the Navy?

2 A. Yeah, I'm not sure who the -- who the email is being --
3 okay. Sent it. Yes, that's correct.

4 Q. And here is the document that was attached, correct?

5 A. That's correct.

6 Q. And if you look on -- about two-thirds of the way down
7 here. I will blow it up on the screen for you here.

8 The question that the assistant secretary of the Navy was
9 asking is "Is there modeling about what the classes would look
10 like without the consideration of race? Is there data from
11 periods before race was considered or temporary periods during
12 which race was not considered?"

13 And the answer from the Academy was that no modeling has
14 been completed to evaluate the admissions implications of not
15 considering race. Correct?

16 A. That is correct.

17 Q. And that the United States Naval Academy has no data prior
18 to the inclusion of race as a nondeterminative factor, correct?

19 A. Can you say that one more time?

20 Q. Yes. USNA has no data prior to the inclusion of race as a
21 nondeterminative factor?

22 A. Correct.

23 Q. Let's talk a little bit about the way the Academy actually
24 uses race. In certain circumstances, which we're going to talk
25 about in detail, you agree with me that the Academy considers

1 race or ethnicity as a factor in admission for all minority
2 groups at the Academy, correct?

3 A. We -- can you say the question one more time. I want to
4 make sure I understood you correctly.

5 Q. Yeah. No problem.

6 The Academy considers race or ethnicity as a factor for
7 admission in at least some circumstances for all minority
8 groups at the Academy, correct?

9 A. The reality is we do a holistic review, and it can be one
10 of many factors that we use in our holistic review.

11 Q. My question is that, when you do use race, it is used as a
12 factor for admission with respect to all minority candidates,
13 correct?

14 A. That's not correct. So we do a holistic review. And we
15 do collect race and ethnicity data, but it's in the context of
16 their diverse experiences along with other holistic factors,
17 which can include a whole list of things, many of which have
18 been talked about already this morning -- unique life
19 experiences, academic qualifications, leadership, and other
20 things. But if there's no context to the race and ethnicity,
21 then it doesn't factor in an admissions decision.

22 Q. Let me rephrase because I was actually trying to ask a
23 different question. So thank you for pointing that out.

24 My question is that, in those cases where race or
25 ethnicity may be a factor, it is possible for it to be a factor

1 for all minority groups, correct? As in it may be a factor
2 that you are African American, correct?

3 A. No. Again, it's -- just the fact that somebody put down
4 that they're African American doesn't factor in an admissions
5 decision. It has to be in the context of other things that are
6 in their application file.

7 Q. I understand that. Let me ask the question a little bit
8 differently.

9 For those candidates for whom race may be a factor in
10 their consideration, does their status as an African American
11 qualify them for the consideration of their race or ethnicity
12 as a factor?

13 A. No. Again, the board is looking at their overall
14 qualifications for admission. So they don't qualify somebody
15 based on their race.

16 Q. I'm going to bring up your declaration in this case.

17 A. Okay.

18 Q. This is the declaration that you submitted earlier in this
19 case at the preliminary injunction stage?

20 A. Yes.

21 Q. And in this declaration you describe in several places
22 just the circumstances in which race may be a factor with
23 respect to admission to the Naval Academy, correct?

24 A. That's correct.

25 Q. And so starting here on page 74 -- I'm sorry --

1 paragraph 74 on page 29 of your declaration, you wrote, "First,
2 race or ethnicity across all minority groups could be one of
3 many determinative factors when deciding whether a qualified
4 candidate receives an LOA."

5 A. I can't read. The document's too big.

6 Q. Okay. I can --

7 MR. GARDNER: Your Honor --

8 THE COURT: Yes, Mr. Gardner?

9 MR. GARDNER: I think Mr. Strawbridge misread the
10 declaration. He said "determinative"; the declaration says
11 "nondeterminative."

12 MR. STRAWBRIDGE: I was not trying to -- I
13 apologize --

14 MR. GARDNER: I am not casting aspersions. I think it
15 was --

16 THE COURT: I've got it in front of me right here.
17 Paragraph 74 reads, "First, race or ethnicity across all
18 minority groups could be one of many nondeterminative factors."

19 MR. GARDNER: Correct.

20 BY MR. STRAWBRIDGE:

21 Q. So what you wrote, what you told the Court, was that it
22 could be a factor across all minority groups, correct?

23 A. As a nondeterminative factor, yes.

24 Q. Yes. And so minority groups at the Academy includes
25 African Americans, correct?

1 A. That's correct.

2 Q. And it includes Hispanic Americans?

3 A. Yes.

4 Q. And it includes Asian Americans?

5 A. That's correct.

6 Q. And it occasionally includes Native Americans or others,
7 correct?

8 A. Correct.

9 Q. All right.

10 A. It also says nondiverse qualified candidates with lower
11 multiples may also receive LOAs.

12 Q. I understand.

13 A. Okay.

14 Q. My question is whether it says "across all minority
15 groups."

16 A. Okay.

17 Q. And it does, right?

18 A. That's correct.

19 Q. And so race can also with be a factor with respect to
20 offers of additional appointees. Do you agree with that?

21 A. It can be a nondeterminative factor.

22 Q. Right. And, again, if you look at the bottom of this
23 document, "race or ethnicity," at the bottom of page 29.

24 A. This is a little too big for me to read.

25 Q. It's too big for you to read. Would it be easier for you

1 to look at the hard copy?

2 A. Yeah, probably.

3 Q. It's in the binder behind you, I think in the black one.

4 THE COURT: Well, is there any reason why it can't be
5 lifted up on the screen and just -- do you have --

6 THE WITNESS: Yeah, I can read it now. It's just
7 they're making it -- they're expanding it; so I can't --

8 MR. STRAWBRIDGE: Oh, I was making it big for those of
9 us who have a hard time seeing small print.

10 THE WITNESS: Yeah, I'm not -- I have reading glasses;
11 so I can figure it out.

12 THE COURT: You might be able just to somehow expand
13 it -- lift it up, I would think. I'm sorry. Can't he just
14 increase the size --

15 THE CLERK: It was too big for the witness.

16 THE COURT: Okay. All right.

17 BY MR. STRAWBRIDGE:

18 Q. So at the bottom in paragraph 75 when you're talking about
19 additional appointees, you told this Court that race or
20 ethnicity across all minority groups may be one of many
21 nondeterminative factors that inform offers of appointment to
22 additional appointees, correct?

23 A. That's correct.

24 Q. Race can be something that the Academy also takes into
25 account when choosing slate winners among competitive slate

1 candidates?

2 A. Again, it's one of the nondeterminative factors that the
3 board -- excuse me -- that the slate review committee may use
4 when selecting -- again, the board only qualifies candidates.
5 And it's not based on their race and ethnicity. But when we
6 compare candidates, it could be one of the nondeterminative
7 factors.

8 Q. Yes. And, again, if you look in paragraph 66. The --

9 A. I'm sorry. Which paragraph are you looking at?

10 Q. Paragraph 76 on page 30 of your declaration.

11 A. That has to do with superintendent's noms.

12 Q. I'm sorry. That's superintendent nominations.

13 A. I think it would be before that.

14 Q. It's paragraph 75.

15 A. Okay.

16 Q. Strike that. I apologize.

17 In paragraph 77 at the bottom. Do you see that?

18 "For service-connected nominations or congressional
19 nominations made either with the competitive method or the
20 principle competitive alternative method" -- and then it goes
21 over to page 31 -- "candidates in those slates are ranked by
22 WPM." Correct?

23 A. That's correct.

24 Q. "As discussed above, in limited circumstances in which the
25 highest WPM scores are very close, a candidate with a slightly

1 lower WPM may be selected over the candidate with the slightly
2 higher WPM based on the strength of their overall application,"
3 correct?

4 A. That's correct.

5 Q. And it says, "Although race or ethnicity across all
6 minority groups could be one of many nondeterminative factors
7 that inform an offer of appointment in this circumstance" --
8 you go on to say an out-of-order WPM selection may not occur
9 because of race or ethnicity, correct?

10 A. Right. Again, we're comparing candidates on the strength
11 of their records. It just may be one of the nondeterminative
12 factors. So we don't select somebody because of their race or
13 ethnicity. It could be used in the context of other factors
14 that we would see in the records we're comparing.

15 Q. Right. But it is a factor that can be used for all
16 minority groups, right?

17 A. Correct.

18 Q. We were just discussing on the prior page on paragraph 76
19 that they can also be used for superintendent nominations?
20 Race may be a factor?

21 A. It could be a nondeterminative factor, yes.

22 Q. The board receives training on how to use race in the
23 admissions process; is that correct?

24 A. That's correct.

25 Q. And we've seen some of the slides today, correct?

1 A. Okay. Yeah, this is a board training slide. Yes.

2 Q. Right. And we looked at -- we looked at the page 45 with
3 Ms. Yang and Mr. Mortara that indicates race or ethnicity or
4 gender could not be the basis for points in favor of an
5 applicant, correct?

6 A. That's correct.

7 Q. But it is considered as one of many factors?

8 A. That's correct.

9 Q. And as Mr. Mortara noted, it's also listed in
10 Ms. Munnelly's presentation later in this document?

11 A. Yes.

12 Q. That it's among the many factors that could be considered
13 in assessing the whole person for purposes of review at the
14 Academy?

15 A. Yeah. This slide -- this slide actually extracts what's
16 in the superintendent's guidance and lists several things that
17 the board has an opportunity to look at. But further training
18 that happens over the next several weeks is the board is
19 specifically directed not to use race or ethnicity as a method
20 for qualifying them.

21 It's used in the context that I listed in my declaration,
22 which might, for example, you know, include the opportunity for
23 an early notify to compete with other institutions or, as was
24 mentioned in there, when we're comparing two candidates. But
25 the board does not qualify somebody based on their race and

1 ethnicity.

2 Again, race and ethnicity has no value unless there's
3 context behind it. So what goes with that is all the other
4 things that we look at. And that can include financial
5 hardship. It could be low income. It could be life
6 experiences, single-parent home. It could be leadership
7 experiences, fluency, holding onto cultural values their
8 families were brought up, and what have you.

9 Q. Mr. Latta, my question was just simply does this list,
10 ethnic heritage, racial and ethnic diversity, as one of the
11 factors that can be considered in the assessment of the whole
12 person?

13 A. Right. But the slide doesn't tell the whole story.

14 Q. Well, I'm asking what's on the slide that you gave to the
15 board for training. Is that what's on the slide?

16 A. It's on this slide, yes.

17 Q. You said that this was an excerpt from the
18 superintendent's guidance?

19 A. It's in -- I forget where it's listed. It's in one of the
20 guidances.

21 Q. Okay. Let's look at P29 that's here on the screen. Is
22 this guidance given by the superintendent to you regarding the
23 conduct of the admissions process?

24 A. Yes.

25 Q. And do you agree with me that -- at the bottom of this

1 page -- can you read that, or do you need me to blow it up?

2 A. I can read it. You want me to read the whole thing?

3 Q. No, I don't want you to read the whole thing. I want to
4 ask if the instruction there is that the board shall -- well,
5 strike that.

6 Do you see in the part that's highlighted here --

7 A. Yes.

8 Q. -- superintendent's guidance was that "The composition of
9 the class of 2027 should be a diverse cross section of America,
10 with the greatest possible variety of backgrounds, to create an
11 educational experience enhanced by interaction among students
12 with differing perspectives and life experiences, raising the
13 level of academic and social discourse, sharpening critical
14 thinking and analytical skills, and preparing students to lead
15 in diverse environments"?

16 A. That's correct.

17 Q. And then it goes on to discuss the diverse experiences
18 that the Academy should consider when it's trying to determine
19 who to admit to the class, correct?

20 A. Correct.

21 Q. All right. And it starts with exceptional adversity or
22 disadvantage, particularly low family income, first-generation
23 American; is that right?

24 A. Correct.

25 Q. First in the family to attend college, correct?

1 A. That's correct.

2 Q. Unusual life experiences that have contributed greatly in
3 formation of moral character?

4 A. Correct.

5 Q. And then it continues to the other page. Let me just blow
6 that up a little bit.

7 Can you read that, or is that too big?

8 A. It's a little bit big, but I can get through it.

9 Q. Okay. It talks about understanding other societies or
10 cultures, correct?

11 A. Correct.

12 Q. "Significant experience or understanding of other cultures
13 resulting from living or study abroad," correct?

14 A. Correct.

15 Q. "Demonstrated superior performance in leadership,
16 especially when highlighted by school or military officials or
17 others in a position of authority who had direct observation of
18 a individual's leadership abilities."

19 It says that, right?

20 A. Oh, I see it, yes.

21 Q. "Unusual familiarity with the Navy Academy through family
22 background," correct?

23 A. That's correct.

24 Q. "Exceptional performance in the fleet -- fleet marine
25 forces, including heroism or exceptional performance in

1 real-world operations or stressful environments"?

2 A. Correct.

3 Q. "Extraordinary athletic ability as evidenced through
4 multiple sports participation or accomplishments"?

5 A. Correct.

6 Q. "Cultural fluency, as evidenced through accomplishments,
7 participation in affinity groups, fluency in foreign language,
8 including English as a second language," correct?

9 A. Correct.

10 Q. And other intercultural experiences, correct?

11 A. Correct.

12 Q. "Significant employment experience, especially when
13 required for family support or results in leadership
14 experience"?

15 A. Correct.

16 Q. "Unique STEM accomplishments, including strong performance
17 in technically oriented curriculum in a post-high school
18 environment," correct?

19 A. Yes.

20 Q. "Or domicile in an underrepresented congressional district
21 as identified by the dean of admissions members." Correct?

22 A. Correct.

23 Q. That then goes on to say, "This is not an exhaustive
24 list," correct?

25 A. Correct.

1 Q. And that they can draw from their experiences to ensure
2 that candidates are identified who can excel in the classroom,
3 on the athletic field, within the grade, and ultimately as
4 leaders of the fleet, correct?

5 A. That's correct.

6 Q. It then goes on to say -- I'm just going to blow this up a
7 little bit -- at the top, "At no point during this process
8 should race, ethnicity, or gender be the basis for points in
9 favor or against an applicant. Such factors may only be
10 considered as one of many nondeterminative factors in the
11 applicant's file." Correct?

12 A. That's correct.

13 Q. You're also familiar with a 2022 inquiry from the House
14 Armed Services Committee about the use of race at the Academy?

15 A. I think so. Maybe you could bring that up and we'll take
16 a look at it.

17 Q. Sure. That's P31.

18 Is this the memorandum that the Navy sent back to the
19 House Armed Services Committee?

20 A. Yes.

21 Q. You're familiar with this document, right?

22 A. I am.

23 Q. You review information that goes to Congress about the
24 Naval Academy admissions process, right?

25 A. I'm sorry. Say that again.

1 Q. Yep. When the Naval Academy gets a request from Congress
2 for information about its admissions process, right --

3 A. Yes.

4 Q. -- you're one of people who is involved in putting the
5 response together?

6 A. Normally, I would, yes.

7 Q. And you recognize this response, right?

8 A. I do.

9 Q. If you look at the second paragraph of this response --
10 again, I will try to blow it up enough so that we can all see
11 it but not so much that you can't read it.

12 Is that okay?

13 A. Yeah. I don't think you need to blow them up. I can read
14 them.

15 Q. Okay. You are responding to a bullet point about the
16 military service academy policy on affirmative action and how
17 it was derived, correct?

18 A. That's correct.

19 Q. And what the Naval Academy wrote back is that USNA uses
20 race as one of a multitude of factors to assess applications
21 for admission, correct?

22 A. That's correct.

23 Q. "All candidates are evaluated using a holistic approach
24 that includes many different factors and considerations
25 associated with each applicant's individual record," right?

1 A. Correct.

2 Q. It says, "No points or quotas exist for race, but it can
3 be a factor among the constellation of other factors," correct?

4 A. That's correct.

5 Q. It also goes on to note that the policy at the Naval
6 Academy "has evolved over several decades in compliance with
7 the U.S. Supreme Court's recognition of the educational value
8 of a diverse student body, as codified in the case of
9 *Grutter v. Bollinger* in 2003."

10 That's what it says, correct?

11 A. That's correct.

12 Q. The date of this document is November 9th, 2022, correct?

13 A. That's correct.

14 Q. There was an additional response given to the House Armed
15 Services Committee in May 2023; is that right?

16 A. I don't remember that. If you can bring that up maybe.

17 Q. Let me pull it up here, see if it jogs your memory.

18 This is Plaintiff's Exhibit 376. Do you see that?

19 A. Yes.

20 Q. Do you see that your name is at the top in the cc line?

21 A. I was copied on this, yes.

22 Q. Yes, right. And it's attaching the United States Naval
23 Academy response to the House Armed Services Committee request
24 for information dated May 30, 2023. Correct?

25 A. Correct.

1 Q. And if we go to the response, I'm going to go to page 6 of
2 this response in paragraph H. Can you read that, or do you
3 want to blow it up a little bit?

4 A. No, I can see that.

5 Q. What demographics are considered in selection, right?
6 That paragraph?

7 A. Yes.

8 Q. It says -- the Naval Academy wrote that "Our admissions
9 board evaluates every candidate who completes their
10 application, using a holistic process that includes both
11 objective and subjective factors. Among the many factors
12 reviewed are academic achievements," right?

13 A. Correct.

14 Q. Athletic and nonathletic participation in extracurricular
15 activities; is that right?

16 A. Yes.

17 Q. Leadership, awards, evaluations by school officials,
18 right?

19 A. Yes.

20 Q. Blue and gold officer recommendations and other letters of
21 recommendation?

22 A. Yes.

23 Q. Community service, correct?

24 A. Yes.

25 Q. Work and life experience/hardship, right?

1 A. Yes.

2 Q. Interest in STEM disciplines and moral character?

3 A. Correct.

4 Q. And that evaluations and recommendations made by the board
5 are applied to the selection process, right?

6 A. Yes.

7 Q. On the next page it says -- there's a follow-up question,
8 paragraph I, "How do the academies ensure diversity, not just
9 of superficial identity, but of other characteristics?"

10 And the Naval Academy responds -- and I'm just going to
11 start in the second sentence in this paragraph -- that
12 "Diversity is also sought broadly to include consideration of
13 nonracial, ethnic, or gender factors, including socioeconomic
14 background," right?

15 A. Correct.

16 Q. Geographic variety, right?

17 A. That's correct.

18 Q. Demonstrated interest in STEM discipline, correct?

19 A. Yes.

20 Q. First-generation Americans, correct?

21 A. Correct.

22 Q. First in family to go to college, correct?

23 A. Correct.

24 Q. Unique cultural experiences, correct?

25 A. Correct.

1 Q. And fluency in second language, correct?

2 A. Correct.

3 Q. It says, "While the Naval Academy also uses race and
4 ethnicity as one of a multitude of factors to assess
5 applications for admissions, no points or quotas exist for
6 either," correct?

7 A. That's correct.

8 Q. "They are simply additional factors among the
9 constellation of other factors considered by the admissions
10 board," correct?

11 A. Correct.

12 Q. There's nothing in this letter about race only being used
13 for letters of assurance or early notification, correct?

14 A. No, that's correct.

15 Q. Would you agree with me that one way that race or
16 ethnicity might be taken into consideration is for candidates
17 who are on the wait list to get to the Naval Academy late in
18 the process?

19 A. We usually have a few candidates on that are minority
20 candidates, yes. But the selection of people that go on the
21 wait list is after review of their files and the factors that
22 are in there. So just because they're a minority candidate
23 doesn't put them on the wait list.

24 Q. Let's look at Plaintiff's 18.

25 You recognize this document, correct?

1 A. Yes.

2 Q. This is a chart that the admissions office prepares near
3 the end of its annual admissions process?

4 A. That's correct.

5 Q. And sometimes you use these charts with the superintendent
6 to update him on how the admissions process has evolved?

7 A. Yeah, this is done in the middle of May. This is actually
8 done after the acceptance deadline; so it's a way to give him a
9 status of the incoming classes. And there's comparison with
10 several classes prior to that.

11 Q. And there are also some spots that need to be filled
12 between the time that the acceptance deadline closes and I-Day
13 begins; is that fair?

14 A. Well, after the acceptance deadline, yeah, there are
15 sometimes openings because people either didn't complete their
16 medical or they declined an offer and what have you. So the
17 wait list is sometimes used to fill in remaining spots in a
18 class. And the primary driver is really outstanding
19 congressional vacancies.

20 Q. Right. So if you look at this document on the second
21 page, which I've turned to here --

22 A. Right.

23 Q. -- you note that attrition from the 1st of May to I-Day is
24 historically 30 to 35 candidates, correct?

25 A. That's correct.

1 Q. And then there's a wait list offering methodology,
2 correct?

3 A. Correct.

4 Q. And that indicates that the methodology at the time is
5 that the Academy is going to offer candidates who meet a
6 combination of the following, right?

7 A. Correct.

8 Q. And the combination is a slate winner or qualified
9 alternate, right?

10 A. Correct.

11 Q. Female, right?

12 A. Correct.

13 Q. And a minority, right?

14 A. Correct.

15 Q. And STEM or other languages, correct?

16 A. Correct.

17 Q. And then the second list on the wait list offering
18 methodology is female representation, right?

19 A. Correct.

20 Q. And the third is diversity representation, correct?

21 A. That's correct.

22 Q. Race can also sometimes be a factor that the Academy may
23 consider when it's filling a second vacancy for a congressional
24 district in a given year; is that right?

25 A. Again, within the context of all the other holistic

1 factors that we look at.

2 Q. Okay. So let's look at Plaintiff's 315.

3 MR. STRAWBRIDGE: I will just note for the Court and
4 for the benefit of the Department of Justice that there are a
5 few redactions on this document to conceal candidate or
6 applicant information.

7 THE COURT: Yes.

8 BY MR. STRAWBRIDGE:

9 Q. You're familiar with this document, right, Dean Latta?

10 A. Yes.

11 Q. This is another document that is sometimes prepared in
12 advance of meetings you have with the superintendent?

13 A. Correct.

14 Q. And it's a status update on the nominations and admissions
15 process?

16 A. Correct.

17 Q. There's a section in this document that refers to filling
18 priorities -- priorities for filling vacancies. It's at the
19 very bottom.

20 A. Correct.

21 Q. Do you need that blown up at all?

22 A. I can see that.

23 Q. Okay. And obviously the first priority is to fill the
24 first vacancy, correct?

25 A. Correct.

1 Q. And the second one listed here is the multiple vacancy
2 priorities, correct?

3 A. Correct.

4 Q. The first is underrepresented -- under that one is
5 underrepresented first. Do you see that?

6 A. That's correct.

7 Q. And that's referring to underrepresented congressional
8 districts, correct?

9 A. That's correct.

10 Q. And then the second one is "the strategic imperative
11 (gender diversity)," correct?

12 A. Correct.

13 Q. And that refers to -- I think as you said at the beginning
14 of this part of my question, it is one factor that you might
15 use in determining --

16 A. Right.

17 Q. -- how to fill a second vacancy, correct?

18 A. That's correct.

19 Q. Now, all of the recommendations that the admissions board
20 makes are just recommendations, correct?

21 A. That's correct.

22 Q. You are not obligated to follow the board's recommendation
23 that a candidate is qualified or not qualified, are you?

24 A. The guidance from the superintendent is I'm final approval
25 authority for -- I've delegated on qualified and not qualified.

1 So I typically do not override the admissions board, but I do
2 have the authority to do so.

3 Q. Yes. And you do sometimes exercise the authority to
4 overrule the admissions board's determination that a candidate
5 is not qualified, correct?

6 A. That would be rare.

7 Q. But it happens, right?

8 A. Yes.

9 Q. Let's look at P24. This is an email between you and
10 Ms. Munnelly?

11 A. That's correct.

12 Q. And you are discussing a candidate for admission, correct?

13 A. Correct.

14 Q. We're going to go to the first page. And Ms. Munnelly
15 writes to you that all board actions are entered from slate
16 review today except for this candidate number you're
17 discussing, right?

18 A. Correct.

19 Q. And what she's referring to when she says "board actions
20 are entered from slate review," slate review is when you and
21 Ms. Munnelly and Ms. Hwang take the board's recommendations and
22 try to apply them to the existing nominations, correct?

23 A. Right.

24 Q. And Ms. Munnelly indicates that, with respect to this
25 particular candidate, you mentioned this candidate was NQ,

1 which means not qualified, right?

2 A. I'm sorry. Say that again.

3 Q. NQ means not qualified?

4 A. That's correct.

5 Q. And she's telling you that the board recommendation for
6 this candidate was actually not qualified, prep, correct?

7 A. Correct.

8 Q. And she's asking, "Do you want me to enter not qualified,
9 prep, as the second look or just not qualified?" Right?

10 A. That's correct.

11 Q. And if you go back up the chain, you say, "Actually, I
12 wanted to qualify her and make her a slate winner," right?

13 A. That's correct.

14 Q. And you noted that the admissions board recommended that
15 she was not qualified with a 590 math SAT and As and Bs
16 throughout algebra 2, correct?

17 A. That's correct. In this particular case, this was a
18 principal nominee that -- and we always do a second look on the
19 principal nominee. And new information came in on her file.
20 And typically with many of the principals or in a case similar
21 to this, the concern was that she hadn't had pre-calc in her
22 thing, and her fall grades included pre-calc with an A and was
23 pretty much an A student through high school.

24 So this was done late in the admissions cycle when the
25 board wasn't meeting. So this would be one of the rare cases

1 where it was obvious to me that -- again, we had to get an
2 offer on the street because it was late. The board wasn't
3 meeting, and the board would have requalified her anyway.

4 So, again, I rarely ever change a board action, but this
5 was one that fell quite in line with what I thought my scope of
6 authority was.

7 Q. So you directed Ms. Munnelly to qualify her and make her
8 the slate winner, correct?

9 A. Right. But she also -- also, part of the process was for
10 her to go back and look at the file and look at it as well.

11 Q. But you didn't take it back to the board; you just
12 exercised your authority?

13 A. Right, because I have that authority to do that.

14 Q. Okay. You agree with me that the Academy does not have
15 any minimum GPA criteria for admission?

16 A. That's correct.

17 Q. And it does not have any minimum SAT score?

18 A. Correct. We rely on the whole-person assessment. So when
19 an application is reviewed by the admissions board, our
20 expectation is they're going to look at a plethora of data. So
21 SAT scores or ACTs, as may be the case, their transcripts,
22 their grade trends, the rigor in the curriculum, the teacher
23 recommendations, all of that goes into their assessment of the
24 candidate.

25 Q. My question was just you do not have a minimum SAT score,

1 correct?

2 A. That's correct.

3 Q. And, in fact, you've seen applicants admitted to the Naval
4 Academy before with SAT component scores below 500; is that
5 correct?

6 A. That would be -- that would be very rare. I -- I don't
7 recall a specific case, but I would imagine over the time I've
8 been there that somebody has been admitted. And that probably
9 would have involved a review by the superintendent.

10 Q. You imagine this happened, or it has happened, yes?

11 A. I don't know for sure if it has or has not happened. I
12 just -- I've been there long enough that I don't remember every
13 single case that's been presented to the admissions board.

14 Q. You remember giving a deposition in this case, Mr. Latta?

15 A. Right.

16 Q. I was there, correct?

17 A. Yeah.

18 Q. There was a court reporter there?

19 A. Correct.

20 Q. Your counsel was there?

21 A. Yeah. I did say -- I did say that at the deposition. So
22 I'm not denying that. I just -- you're asking me for a
23 specific case, and I assume there is one. I just don't know
24 when it --

25 Q. I asked you the question at the deposition if it had

1 happened before?

2 A. Yes. I agree with you. I'm not going to go dispute
3 that -- I did say that, yes.

4 Q. You said yes, correct?

5 A. Right. I just don't remember exactly. I'm sure -- I'm
6 sure there is. There's usually --

7 Q. Your answer to the question in the deposition was not "I
8 don't know"; it was, "Yes, that has happened before"?

9 A. Okay. I agree with you, then, yes.

10 Q. Your office tracks the racial demographics of the class as
11 it's being admitted, correct?

12 A. Yes.

13 Q. We talked -- we heard from Ms. Hwang earlier that there's
14 usually a weekly meeting of your staff during the admissions
15 cycle?

16 A. Yes.

17 Q. I say usually because there's sometimes holidays or other
18 business that might mean you skip a week every now and then,
19 right?

20 A. Right.

21 Q. It's typically scheduled on Tuesdays, right?

22 A. Correct.

23 Q. And the packet of information that we talked about with
24 Ms. Hwang gets distributed in advance of that meeting, right?

25 A. Correct.

1 Q. Let's look at one of those packets. I'm going to pull up
2 P558. This is an example of a dean's brief, correct?

3 A. Correct.

4 Q. This is from March of 2022?

5 A. Correct.

6 Q. The first page after the cover title in the dean's brief
7 here shows the 2026 class stats from 15 March 2022, correct?

8 A. Yes.

9 Q. And it compares the class of 2026 stats to those of the
10 2025 class, correct?

11 A. That's correct.

12 Q. And is that comparison being made at the same point in the
13 process?

14 A. Generally, yeah. Hopefully, it's day to day over --
15 they're usually a comparison on approximately the same day each
16 year.

17 Q. Correct. And down the left-hand column we can see that
18 there is listed the number of applications, correct?

19 A. That's correct.

20 Q. And the number of candidates, correct?

21 A. That's correct.

22 Q. And candidates are essentially people who have completed
23 all the initial steps of the application?

24 A. Yes. They fill out a preliminary application and, after a
25 screening by a computer, were made a candidate.

1 Q. All right. And then there are cases, correct?

2 A. Yes.

3 Q. Those are cases that have actually gone to the admissions
4 board?

5 A. That's correct.

6 Q. And then there's the number of offers that the Naval
7 Academy has made to date?

8 A. That's correct.

9 Q. And then the number of people who have accepted their
10 offers as of 15th March 2022, correct?

11 A. That's correct.

12 Q. And then it also shows how many NAPS offers have been
13 made?

14 A. Correct.

15 Q. That's the Naval Academy Preparatory School?

16 A. NAPS is the Naval Academy Preparatory School, yes.

17 Q. And then the last row here is "FND rec," correct?

18 A. Yes. The Foundation -- the Naval Academy Foundation are
19 private schools that are sponsored through the Naval Academy
20 Foundation. So those are students that have been -- it's
21 essentially similar to NAPS but through a civilian school.

22 Q. It's another prep program, correct?

23 A. That's correct.

24 Q. And this document then across the top lists the total
25 number of applications that fall in these buckets for 2026,

1 correct?

2 A. That's correct.

3 Q. Compared to the class of 2025?

4 A. Correct.

5 Q. And then it lists the total number of minority
6 applications in 2026 compared to 2025?

7 A. That's correct.

8 Q. And then it separately breaks out the number of African
9 American applications from 2026 to 2025?

10 A. Correct.

11 Q. And then it lists the number of Hispanic applications from
12 2026 compared to 2025, correct?

13 A. Yes.

14 Q. And then it lists the number of Asian or Native American
15 applications from 2026 to 2025?

16 A. That's correct.

17 Q. You would agree with me, Dean Latta, that there's nothing
18 on this chart that appears on the second page of the dean's
19 brief that you get on a semiweekly basis throughout the course
20 of the admissions cycle that sets forth any similar numbers for
21 socioeconomic status?

22 A. Correct.

23 Q. There's nothing on this chart that sets out any
24 information of a student who came from rural or urban areas,
25 correct?

1 A. That's correct.

2 Q. There's nothing on this chart that sets out any
3 information about the students who applied who are
4 first-generation Americans, is there?

5 A. That's correct.

6 Q. There's nothing on this chart that sets out any
7 information about students who are first-generation college, is
8 there?

9 A. That's correct.

10 Q. There's nothing in here about students who have come from
11 homes where English is a second language, correct?

12 A. That's correct.

13 Q. Nothing on this chart tells us anything about students who
14 have faced hardship or adversity, correct?

15 A. Correct.

16 Q. And there's no chart that shows those factors anywhere in
17 this document, is there?

18 A. No.

19 Q. We have a summary exhibit that summarizes --

20 MR. STRAWBRIDGE: And this is in evidence, Your Honor.

21 BY MR. STRAWBRIDGE:

22 Q. -- just how many times you get the dean's brief in this
23 chart over the course of the admissions cycle.

24 Do you see this?

25 A. I do.

1 Q. Okay. Can you read the dates on it?

2 A. June 21st; August 9th, 16th, and 31st; September 13th --

3 Q. Sorry. I wasn't asking you to read; I was asking if
4 you're able to read the dates.

5 A. Oh, okay. I can read it.

6 THE CLERK: Counsel, if you don't mind, when you're
7 putting up a new exhibit, please mention the number.

8 MR. STRAWBRIDGE: Yes. This is Plaintiff's
9 Exhibit 465.

10 BY MR. STRAWBRIDGE:

11 Q. This chart indicates that you get your first dean's brief
12 for, in this case, the admissions cycle that covered '21 to
13 '22, which would have been the 2026 class, correct?

14 A. That's correct.

15 Q. So you got your first one in June of '21, right?

16 A. Correct.

17 Q. And then you got three more in August, correct?

18 A. That's correct.

19 Q. And that's obviously the early process in the cycle; so
20 the applications are just starting to flow in?

21 A. Right.

22 Q. Right?

23 A. Correct.

24 Q. Then you get another one on September 13th, correct?

25 A. Correct.

1 Q. And another one on September 27th, correct?

2 A. Correct.

3 Q. You get three more in October?

4 A. Correct.

5 Q. You get four in November?

6 A. Correct.

7 Q. You get two in December?

8 A. Correct.

9 Q. You get three more in January?

10 A. Correct.

11 Q. You get one in February?

12 A. Correct.

13 Q. You get three in March?

14 A. Correct.

15 Q. You get two in April?

16 A. Correct.

17 Q. You get two in May?

18 A. Correct.

19 Q. And you get one in June?

20 A. Correct.

21 Q. I want to talk about another set of reports that you
22 sometimes draw up during the admissions cycle.

23 I'm going to bring up Plaintiff's Exhibit 4. And I will
24 just note that, again, this has some redactions of candidate
25 information.

1 This one, I think I'm going to have to blow up so that we
2 can see it a little bit better.

3 Can you read this?

4 A. Yes.

5 Q. This is a report that you generate several times during
6 the admissions cycle, correct?

7 A. It's usually a couple times, yes.

8 Q. It's a report entitled "African American Qualified No
9 Offers," right?

10 A. That's correct, yes.

11 Q. And this report is essentially giving you a list of
12 certain candidates who have not received an offer to attend the
13 Naval Academy at this point in the process, correct?

14 A. That's correct.

15 Q. And the date on this one is 2021/4/9; so April 9th,
16 correct?

17 A. That is correct.

18 Q. And I want to talk just a little bit about the filtering
19 that's applied to this document. There's a -- there's a note
20 here that the board result equals qualified.

21 Do you see that?

22 A. That's correct.

23 Q. That's because this report is intended to show candidates
24 who are qualified, right?

25 A. Correct.

1 Q. And it you also shows that Black or African American
2 equals true, correct?

3 A. Correct.

4 Q. So that's designed to capture anybody who indicated that
5 their race was Black or African American, correct?

6 A. That's correct.

7 Q. In whole or in part, right?

8 A. Yes.

9 Q. And you generate this list to determine if there are
10 candidates who should still be receiving an offer at this point
11 in the admissions process, correct?

12 A. No -- well, it's meant really to keep visibility. I don't
13 have good reports across the board for all the candidates,
14 except for the congressional vacancies. So as we're getting to
15 the process where we're going to form the wait lists and/or
16 turn down candidates, I often will run reports like this to
17 keep visibility on who still is qualified.

18 In many cases -- in many of the cases here, these were
19 candidates that the board recommended LOAs early in the cycle
20 but didn't necessarily receive a letter of assurance.

21 Q. Let's talk about some of the other reports that you
22 generate --

23 A. Right.

24 Q. -- that are similar to this.

25 I'm going to bring up Plaintiff's Exhibit 3. Again, I'm

1 just going to zoom in on part of this document. Try not to
2 make it too big. That's my fault.

3 Another one of the reports that you generate a few times
4 during the admissions cycle is Hispanic or Latino qualified no
5 offers?

6 A. Correct.

7 Q. This one -- again, going to the filtering information --
8 Black or African American equals false, correct?

9 Do you see that?

10 A. Correct.

11 Q. So this report is the showing candidates who have
12 identified their ethnicity as Hispanic or Latino but have not
13 indicated that they're also Black or African American, correct?

14 A. That is correct.

15 Q. And you used this report for the same purpose as the last
16 one we looked at, to see if there are any qualified Hispanic or
17 Latino candidates who should be considered for an offer?

18 A. Well, I use it to keep visibility on them. It doesn't
19 mean we offer them appointments or anything. In fact, many of
20 the candidates -- in fact, most of them on here -- probably
21 were rejected or turned down at the end of the cycle.

22 Q. Let's talk about another one of these reports that you
23 generate.

24 We're going to pull up Plaintiff's Exhibit 2.

25 This report is entitled "Asian and other qualified no

1 offers," correct?

2 A. That's correct.

3 Q. And you'll note here again that it has a designation that
4 Black or African American equals false, correct?

5 A. That's correct.

6 Q. And that Hispanic or Latino equals no, correct?

7 A. Correct.

8 Q. So these are Asian Americans who are -- not otherwise
9 identified themselves in part as African American or with an
10 ethnicity of Hispanic or Latino?

11 A. That's correct.

12 Q. You do not generate any such report like this for
13 candidates with low socioeconomic status, do you?

14 A. No, I don't.

15 Q. And you do not generate any report like this for
16 candidates who are first-generation Americans, do you?

17 A. No.

18 Q. You do not generate any report like this for candidates
19 who are first-generation college, do you?

20 A. No.

21 Q. And you do not generate any report like this for
22 candidates who have been identified as having hardship,
23 correct?

24 A. Correct.

25 Q. All right. Just one more set of reports that I want to

1 ask you about.

2 We talked earlier about how you often prepare a class
3 comparison report at the end of the admissions process for
4 meetings with the superintendent.

5 A. Can you point that out to me?

6 Q. Yeah. Well, we talked earlier about Plaintiff's
7 Exhibit 18, correct?

8 A. Okay. Yes.

9 Q. I want to look at one of these reports, actually. We're
10 going to look at Plaintiff's 41.

11 Okay. Do you see this document?

12 A. I do.

13 Q. This chart would have been prepared in the summer of 2019,
14 correct?

15 A. Correct.

16 Q. At the end of the admissions cycle for the class of 2023,
17 right?

18 A. That's correct.

19 Q. These charts that you prepare for the superintendent break
20 down some of the historic admissions data at the Naval Academy?

21 A. Correct.

22 Q. The first section at the top is just comparing the status
23 of offers and acceptances on June 29th and I-Day of each year,
24 correct?

25 A. Correct.

1 Q. And I-Day is the day that people have to report to the
2 Academy as plebes?

3 A. Right. And I would have assumed this would have been
4 generated on or the day after I-Day.

5 Q. Very close to I-Day?

6 A. Yeah.

7 Q. The second section breaks down the same information for
8 female applicants, correct?

9 A. Correct.

10 Q. The historic data about how many accepted their offers and
11 how many were offered and where they were in late June and on
12 I-Day, correct?

13 A. Correct.

14 Q. And the third section breaks the same information down for
15 minorities, correct?

16 A. Correct.

17 Q. The two numbers under each of the minority columns here at
18 least are the -- strike that.

19 If you look across that column, for each year it lists the
20 number of African American -- excuse me.

21 I'm just not quite as smooth as Mr. Mortara.

22 **THE COURT:** That's quite all right. It's getting late
23 in the morning. This might be a good time to take a break.

24 Ms. Thomas, the court reporter, does that periodically.

25 When she's getting tired, she does some of her magic and

1 something goes wrong and it gives her a break that way.

2 So, Ms. Thomas, we heard your message, and we'll take a
3 10-minute break here.

4 **THE CLERK:** All rise. This Honorable Court is now in
5 recess.

6 (A recess was taken from 11:41 a.m. to 12:00 p.m.)

7 **THE COURT:** Mr. Strawbridge, you may continue.
8 Yes, Mr. Gardner?

9 **MR. GARDNER:** Your Honor, before we begin, at your
10 request, we have an unredacted copy of Plaintiff's Exhibit 491.
11 May we please hand it up?

12 **THE COURT:** Okay. Good. Yeah. Just bring it up to
13 the clerk, and I'll look at it at lunchtime.

14 **MR. GARDNER:** Thank you, Your Honor.

15 **THE COURT:** And Ms. Hwang is still in the building
16 here; is that correct?

17 **MR. GARDNER:** Yes, Your Honor.

18 **THE COURT:** I hate to inconvenience her, but she'll
19 have to just wait until -- let me take a look it in case -- and
20 the Mr. Mortara may want to bring her back on the witness
21 stand. So that's fine.

22 **MR. GARDNER:** Yes, Your Honor.

23 **THE COURT:** All right. Thank you very much. And so
24 we'll be able to clearly identify the unredacted copy. We'll
25 be able to see what was redacted, correct?

1 MS. YANG: Yes.

2 THE COURT: Okay. That's fine. We have a redacted
3 copy and an unredacted copy I can compare. I'll do it at
4 lunchtime. Okay. Thank you very much.

5 You may continue, Mr. Strawbridge.

6 BY MR. STRAWBRIDGE:

7 Q. All right. Dean Latta, looking at P41 again, we were
8 talking a little bit about this chart. I wanted to talk about
9 the class comparisons minorities at the bottom --

10 A. Correct.

11 Q. -- section of this chart.

12 A. Correct.

13 Q. This lists the historical data with respect to minority
14 offers and acceptances at the Naval Academy, correct?

15 A. That's correct.

16 Q. And if you look at the last three rows for 2021, 2022, and
17 the class of 2023, there are two numbers in each field in the
18 minority section, correct?

19 A. That's correct.

20 Q. And the first number is the number of offers, correct?

21 A. That's correct.

22 Q. And the number in parentheses is the number of
23 acceptances, correct?

24 A. Correct. That's correct.

25 Q. So that for 2023 we can see that there were 139 offers

1 made to candidates who were African American and 128 of them
2 have accepted, correct?

3 A. I'm sorry. Correct.

4 Q. That is correct? I'm sorry?

5 A. Yes.

6 Q. And it is those numbers that you used to calculate the
7 percentages listed at the bottom of this document, correct?

8 A. Correct.

9 Q. So, for example, for the minority acceptance rate, you
10 took the 469 total minority accepts for 2023 and you calculated
11 that against the overall accepts of 2023 of 1,181, correct?

12 A. I'm sorry. Say that again.

13 Q. So for the minority acceptance rate, you see how it's
14 listed as 39.7 percent of the overall total?

15 A. That would be the percentage of the class --

16 Q. Right.

17 A. -- of U.S. students.

18 Q. Right. And that's 469, which is the number in parentheses
19 here, correct?

20 A. Correct.

21 Q. Divided by 1,181, which is the total number of accepts,
22 correct?

23 A. That's correct.

24 Q. I want to take a look -- well, actually, let me just ask a
25 question. There's nothing on this document that gives you any

1 indication of which of these candidates are socioeconomically
2 disadvantaged, is there?

3 A. I think you asked me that question already.

4 Q. I think I asked you about the other document. Did I ask
5 you about this one?

6 A. I think you did on this one.

7 Q. Okay. But you agree with me there isn't, right?

8 A. Correct.

9 Q. This shows totals, it shows and females, and it shows
10 minorities, correct?

11 A. Correct.

12 Q. That's all it shows?

13 A. Correct.

14 Q. Let's talk about another version of these charts. We're
15 just going to look at Plaintiff's 39. This is essentially the
16 same document, correct?

17 A. Correct.

18 Q. For a different year, right?

19 A. That's correct.

20 Q. This one would be for the class of 2024?

21 A. That is correct.

22 Q. And the last one we looked at was for the class of 2023,
23 right?

24 A. That's correct.

25 Q. Okay. And it has all the same information with respect to

1 offers and acceptances?

2 A. Correct.

3 Q. And female offers and acceptances?

4 A. Correct.

5 Q. And minority offers and acceptances?

6 A. Correct.

7 Q. All right. I want to take a look at a slightly different
8 iteration of this chart. Let's look at Plaintiff's 207. It
9 starts with a cover email, right?

10 Do you see this email?

11 A. I do.

12 Q. This is an email that you sent to the superintendent; is
13 that right?

14 A. That's correct.

15 Q. In May 25th of 2022?

16 A. Yes.

17 Q. And here you are noting that you are attaching the updated
18 stats on the class of 2026, correct?

19 A. That's correct.

20 Q. And you talk a little bit about the fact that you may lose
21 some candidates between May and I-Day, right?

22 A. That's correct.

23 Q. Let's look at the attachment to this email. This looks
24 very similar to the one that we had looked at previously,
25 correct?

1 A. Correct.

2 Q. I note that there's some highlighting on this document.
3 Verify it for yourself, but do you agree with me that the
4 highlighting here is essentially the largest number in each
5 section?

6 A. That would be correct.

7 Q. Okay. Do you know why you were highlighting that?

8 A. Just -- just providing information to the superintendent.
9 That's all.

10 Q. Okay. And unlike the other chart, this one does not have
11 the accepts in parentheses at the bottom for the last few
12 classes for the minorities, correct?

13 A. That's correct.

14 Q. But if we go to the next page, it's separately listed in
15 this chart.

16 Do you see that?

17 A. That's correct.

18 Q. Okay. And so this chart lists the overall number of
19 accepts and the percentages based on sex, correct? Male and
20 female?

21 A. I'm sorry. I missed the question.

22 Q. Sorry.

23 This chart lists the total number of accepts, correct, at
24 the top?

25 A. Right.

1 Q. And the percentage who accepted their offers?

2 A. The percentage, correct.

3 Q. Right. And it also lists the same information for male
4 and female candidates?

5 A. Correct.

6 Q. And it also lists the same information for minority
7 candidates?

8 A. Correct.

9 Q. And the total minority number is the sum of African
10 American, Hispanic, and Asian or other students, right?

11 A. That is correct.

12 Q. And I take it that, since you're calculating percentages
13 with this, no one is double-counted in those three cells,
14 right?

15 A. No. This is just a simplified format. It groups the prep
16 school students, which tend to drive the accept rates up.

17 Q. Right. But my question was just simply that nobody is
18 double-counted here because you need to get an accurate
19 percentage of the overall class, right?

20 A. I'll agree with you. I don't have any reason to say that
21 isn't the case, yeah.

22 Q. And you agree with me that 479 out of 1,160 is
23 41.3 percent, as shown in that 2026 slide, correct?

24 A. That's correct.

25 Q. This just requires me to ask you a clarifying question.

1 Remember when we talked about your declaration in this
2 case?

3 A. What part of the declaration?

4 Q. Well, you remember your declaration in this case, right?

5 A. Yeah, I do.

6 Q. We'll pull it up right now.

7 A. Okay.

8 Q. If you go to paragraph 72 of this declaration, you've
9 provided the Court with some information about the historic
10 minority acceptance rate.

11 Do you see that in paragraph 72?

12 A. I do.

13 Q. Over the past 30 years, minority representation among
14 incoming classes has increased from approximately 17 percent in
15 the class of 1997 to 24 percent for the class of 2002 to over
16 40 percent in the class of 2026. Correct?

17 A. That's correct.

18 Q. And that 40 percent is totally consistent with that math
19 we were just looking at. I can go back to it if you want.

20 A. Oh, that would be a good idea.

21 Q. Do you want me to go back to it?

22 A. Yeah. Just refresh my memory.

23 Q. Class of 2006, you calculated the minority acceptance rate
24 as 479 out of 1,160 is 41.3 percent.

25 A. That's correct.

1 Q. Okay. So let's go back --

2 A. That was as of the 24th of May; so that's not the final
3 stats for the class. I don't remember what they were, but
4 I'll --

5 Q. Well, I assume that it's probably reflected in what you
6 actually reported in the declaration, right?

7 A. I would assume so.

8 Q. Right. So let's go back and just look at that again.
9 We're looking at paragraph 72.

10 I'm sorry. Paragraph 72 is on page 28. And that's where
11 you reported that there was a over 40 percent acceptance rate
12 for minority applicants in the class of 2026, right?

13 A. Correct.

14 Q. Okay. And then you go on to say that "The Naval Academy
15 is not yet at the point where it can build a diverse brigade
16 that reflects American society without the limited
17 consideration of race or ethnicity," right?

18 A. That's correct.

19 Q. And then if we go to the next page, you note that
20 6 percent of the incoming class of 2026 identified as African
21 American, 15 percent as Hispanic, less than 1 percent as Native
22 American, and 10 percent as Asian American, correct?

23 A. That's correct.

24 Q. 15 percent -- well, 6 percent of African Americans plus
25 15 percent of Hispanics is 21 percent, right? I'm just adding

1 them together.

2 A. Okay.

3 Q. 15 plus 6 is 21, right?

4 A. Correct.

5 Q. Plus 1 is 22, right?

6 A. Correct.

7 Q. Plus 10 is 32, right?

8 A. Okay.

9 Q. 22 plus 10 is 32 percent, right?

10 A. Okay.

11 Q. But what -- earlier in the paragraph you said that there
12 was over 40 percent minority acceptances in the class of 2026,
13 correct?

14 A. That's correct.

15 Q. And the reason is is that because, when you provided these
16 numbers to the Court, you excluded applicants who had put down
17 more than one race in their --

18 A. That's correct.

19 Q. That is correct, right?

20 A. Uh-huh.

21 Q. But that's not the case if we go back to P207, correct?

22 A. Right.

23 Q. Here, you were not calculating it based on that
24 percentage, correct?

25 A. No. But -- so when you do weekly stats to the

1 superintendent, we provide a very simplified format. But I've
2 always -- part of the discussion is that they know that, when
3 we do the final reporting for the class, that we have to report
4 students -- and there's a methodology that O&B provides for
5 multiple races. Hispanic and Latino is a factor in how the
6 reports are generated and what have you.

7 So these really are to keep it simple and also so we can
8 put it on one page because, if we put every category down
9 there, it would be difficult to put in one paragraph. So it
10 gives them a very basic overview of what the class is looking
11 like.

12 Q. Okay. But, nonetheless, the class comparison charts we've
13 been looking at, they include students who are any part African
14 American in the African American column?

15 A. Right. But the superintendent knows that.

16 Q. Okay. I want to talk about when the Naval Academy intends
17 to stop using race in its admissions program. I'm going to
18 bring up the interrogatory responses that the defendants
19 submitted in this case. You reviewed some of those responses,
20 correct?

21 A. I did, yes.

22 Q. And you, in fact, signed some of these responses on behalf
23 of the Naval Academy, correct?

24 A. That's correct.

25 Q. So if we look at Number 11 here, Naval Academy was asked

1 to identify the date on which the United States Naval Academy
2 will stop using race in the admissions process or, if no end
3 date exists, the conditions that will need to occur for the
4 Naval Academy to stop using race in the admissions process,
5 correct?

6 A. That's correct.

7 Q. And according to this response that you signed -- I'm
8 going to the last sentence here. Let me if you need me to blow
9 it up.

10 A. I can read it.

11 Q. "The United States Naval Academy anticipates that, once it
12 both achieves and maintains the racial and ethnic diversity of
13 USNA's student body at a level comparable to the ethnic and
14 racial diversity of the general population, it will no longer
15 have a need to continue its limited consideration of race in
16 the admissions process."

17 That's what you wrote, right?

18 A. That's correct.

19 Q. Who is in charge of deciding the end point of the use of
20 race in the Naval Academy's admissions process?

21 A. I would assume that would be the superintendent. And it
22 would probably follow discussion with the Navy leadership as
23 well as other folks like myself and members of the senior
24 leadership team.

25 Q. This has not always been the end point for the Academy's

1 use of race during your time at the Academy, has it?

2 A. I'm sorry. I didn't understand the question.

3 Q. Has this always been the point at which the Naval Academy
4 would stop using race?

5 A. No. It's really been the last three or four years we've
6 taken a look at this.

7 Q. When did it change?

8 A. I think that would involve privileged information which I
9 can't divulge.

10 Q. I think you can answer when it changed.

11 THE COURT: I think you can answer the question.
12 That's not privileged. Just the date you changed --

13 THE WITNESS: We had a legal review in 2020 or '21
14 that discussed...

15 THE COURT: All right.

16 BY MR. STRAWBRIDGE:

17 Q. So your position is that this became the end point
18 sometime in 2020 or 2021?

19 A. No, it was first discussed. I think the --

20 THE COURT: Don't go into the contents of it. You
21 just go into when -- it was the chronology. It's not very
22 complicated. It's the chronology of when a matter was
23 discussed in terms of whether or not there was or was not a
24 change. And for that matter, we're not presuming that there is
25 an end date, nor legally has that determination been made that

1 applies to a military academy. That's a legal issue that the
2 Court will address down the road.

3 But the question quite simply is when was there any
4 consideration of -- and a chronology as to when there was a
5 consideration of a possible end date. And you don't need to
6 explain, and you're not required to go into the details in
7 terms of discussions. But just chronologically, when was it
8 discussed?

9 THE WITNESS: Yeah, to the best of my knowledge, it
10 probably started with the legal review.

11 THE COURT: Legal review in 2020 or 2021?

12 THE WITNESS: I don't remember. It was somewhere
13 then. It was one of those two years, yes, sir.

14 THE COURT: All right. Legal review in 2021.

15 BY MR. STRAWBRIDGE:

16 Q. What was the definition for the --

17 THE COURT: No, no. You've gone enough,
18 Mr. Strawbridge. We're not going to try to probe and see when
19 I'm going to let you go into privileged information.

20 MR. STRAWBRIDGE: Your Honor, let me ask the question.

21 THE COURT: That's fine. That's fine.

22 BY MR. STRAWBRIDGE:

23 Q. What was the end date before 2021? Before this became the
24 definition of success, what was the Naval Academy's intention
25 with respect to when it would stop using race?

1 A. It hadn't really been discussed.

2 Q. It hadn't been discussed?

3 A. Right.

4 Q. Okay. Are you sure that at no point the Naval Academy's
5 interest in using race was tied to matching the overall
6 demographics of the Navy?

7 A. No. I -- I think that there -- I don't recall that, no.

8 Q. Okay. Are you familiar with the institutional assessment
9 report for the office of admissions?

10 A. Yes.

11 Q. Is that a report that you prepare each year, describing
12 the goals of your office and how it could achieve them?

13 A. Yes.

14 Q. As well as the fiscal demands and constraints on your
15 office?

16 A. That's correct.

17 Q. It's an accountability report, right?

18 A. I'm not sure I'd call it an accountability report; it's an
19 assessment of where we were for that particular year.

20 MR. STRAWBRIDGE: All right. I'd like to bring up on
21 the screen one of those reports.

22 BY MR. STRAWBRIDGE:

23 Q. This is the institutional assessment report that you
24 filled out on behalf of the admissions office?

25 A. Yes.

1 **THE CLERK:** Exhibit number?

2 **MR. STRAWBRIDGE:** I'm sorry. It's actually not on the
3 list, but I have copies of it here. This is a form of
4 impeachment.

5 **THE COURT:** What is on the screen now? It's
6 Plaintiff's Exhibit 803?

7 **MR. STRAWBRIDGE:** 803. And I have copies of it here,
8 Your Honor.

9 **THE COURT:** All right. Just give it to the clerk.
10 That's all. Plaintiff's Exhibit 803.

11 **MR. GARDNER:** Your Honor?

12 **THE COURT:** Yes.

13 **MR. GARDNER:** Just so I'm clear, Mr. Strawbridge said
14 impeachment. His response was he doesn't recall. It sounds
15 like he's refreshing recollection rather than impeaching.

16 **THE COURT:** I think that's correct. No impeachment,
17 just refreshing recollection.

18 **MR. GARDNER:** So then he'll ask the question and pull
19 the document back under appropriate refreshment?

20 **THE COURT:** No, he can look at it here. That's fine.

21 **MR. GARDNER:** Understood.

22 **THE COURT:** That's fine.

23 **BY MR. STRAWBRIDGE:**

24 **Q.** Halfway down this first page, you list a number of goals
25 for academy year '21; is that correct?

1 A. Academic year '21, yes.

2 Q. I'm sorry. Academic year 2021. And the first goal is to
3 increase preliminary applications by 2 percent; is that right?

4 A. Yes.

5 Q. And the second goal is to attain a 40 percent application
6 completion rate of total candidate pool; is that correct?

7 A. That's correct.

8 Q. The third goal on the next page is to receive nominations
9 from every congressional district?

10 A. Correct.

11 Q. And then the fourth goal is to increase diversity in the
12 brigade of midshipman to reflect the demographics of the Navy;
13 is that right?

14 A. Yes.

15 Q. Was that the purpose to which the Naval Academy was using
16 racial preferences for academic year 2021?

17 A. No. It's just a misstatement. That's all.

18 Q. It's just a mistake?

19 A. It was a misstatement, yes.

20 Q. Okay. Is this a misstatement that persisted for a number
21 of years in these reports?

22 A. There's a couple years where it says that in there. I
23 think we just -- it got in there, and we didn't catch it.
24 That's all. There's a couple more years where it has that in
25 there.

1 Q. I'm going to hand you what's been marked for
2 identification as P804.

3 MR. GARDNER: Your Honor, just so I'm clear, are we
4 now refreshing recollection or impeaching?

5 THE COURT: Yes, that's what he's doing. He's
6 refreshing recollection.

7 MR. GARDNER: Because he did say that it is in other
8 reports.

9 THE COURT: That's fine. That's fine.

10 BY MR. STRAWBRIDGE:

11 Q. This is for -- would you agree with me that this is for
12 the report for the following year, listing the goals for
13 academic year '22? It starts on the second page.

14 A. Yeah. I'm looking at it, yes.

15 Q. And then, again, we have some information about minimum
16 applications, and we have application completion rates. We
17 have nominations from every congressional district, and then we
18 have, Number 4, "Increase diversity in the brigade of
19 midshipman to reflect the demographics of the Navy," correct?

20 A. Correct.

21 Q. Let me show you what's been marked for identification as
22 Plaintiff's Exhibit 805.

23 I've got 805 on the screen here. This is the next year's
24 institutional assessment report; is that correct?

25 A. That's correct.

1 Q. And so the goals are listed starting on -- I'm sorry --
2 starting on, I think, the third page of this document, the
3 goals for the coming year?

4 A. Correct.

5 Q. Class of 2027?

6 A. Correct.

7 Q. And if we go -- the fourth goal says, "Increase diversity
8 in the brigade of midshipman to reflect the demographics of the
9 Navy"?

10 A. That's correct.

11 Q. So we've seen three reports now that have this
12 demographics of the Navy definition in it?

13 A. That's true.

14 Q. Okay. One more. This is P806 marked for identification.
15 This is describing, again, the following year, the outcome
16 is from '23 and the goals for '24?

17 A. Correct.

18 Q. And then if you go to, I think, the fourth page of this
19 document, we see Number 4 again. "Increase diversity in the
20 brigade of midshipman to reflect the demographics of the Navy,"
21 correct?

22 A. That's correct.

23 Q. When did academic year '24 begin?

24 A. That was this last year.

25 Q. Okay. That was the summer of 2023 is when it starts?

1 A. Correct.

2 Q. And it goes through the same -- through the summer of
3 2024?

4 A. Right.

5 Q. So that goal has been listed in this document that you
6 prepare, I assume, to report to the greater Academy?

7 A. It goes to -- there's a board that reviews it.

8 Q. For at least four years?

9 A. Correct.

10 Q. Including this past year?

11 A. Correct.

12 Q. I want to ask you a different question now.

13 The goal that you reported in the interrogatory response
14 we looked at is that the Navy is going to continue using race
15 until it is able to obtain and maintain the demographics of the
16 Naval Academy consistent with the demographics of American
17 society, right?

18 A. That's correct.

19 Q. You agree with me that Asian Americans are overrepresented
20 at the Academy compared to society in general, correct?

21 A. Correct.

22 Q. And if we go back to your declaration in this case on
23 page 29, you noted that in 2026 10 percent of the class
24 identified as Asian American whereas Asian Americans are
25 6 percent according to the census figures that you cited here,

1 correct?

2 A. Correct.

3 Q. Do you know how long Asian Americans have been
4 overrepresented at the Naval Academy compared to their
5 population of general society?

6 A. No, I don't.

7 Q. Has it been true for the entirety of your career at the
8 Naval Academy?

9 A. No, it hasn't, but it's probably been the last few years.
10 I'm not sure how many.

11 Q. This is the class portrait of 2025. You agree that they
12 were overrepresented then, right?

13 A. Correct.

14 Q. Okay. And that was the class -- the class of 2025 was
15 admitted in 2021?

16 A. Correct.

17 Q. I'm sorry. This is Plaintiff's Exhibit 521.

18 My question for you, Dean Latta, is when, if ever, does
19 the United States Naval Academy intend to stop including Asian
20 Americans in their designation of racial minorities who receive
21 preferences in some respect as described in your declaration?

22 A. Well, I think the answer is that they are racial
23 minorities, and segmenting one group out from the other, to me,
24 would be another form of discrimination. I think that we're
25 assessing everybody on their holistic -- the holistic factors

1 there in their application file.

2 So, again, we have the numbers based on the overall
3 evaluation of all the candidates and everything we looked at in
4 their files. And that's why the numbers have improved.

5 Q. I'm going to hand you a copy of your deposition.

6 A. Correct.

7 Q. Let's open to page 247. Do you see it there?

8 A. Yes.

9 Q. There's a question starting on line -- I'm sorry. Go to
10 246. My apologies.

11 Do you see the question starting on line 16?

12 A. Yes.

13 Q. And the question that I asked you at your deposition in
14 this case earlier this summer is "Okay. So my question is
15 when, if ever, does the United States Naval Academy intend to
16 stop including Asian Americans in their designation of racial
17 minorities who receive the preferences described in your
18 declaration?"

19 And your answer was -- on the next page -- "I don't think
20 we've established a criteria."

21 MR. GARDNER: Your Honor.

22 THE COURT: Yes?

23 MR. GARDNER: That's not proper impeachment. What he
24 said on the stand is not inconsistent with --

25 THE COURT: Well, that may be true, but, I mean, I'm

1 certainly capable of seeing that.

2 **MR. GARDNER:** Understood, Your Honor. I just want to
3 make sure we're being clear about what is proper impeachment
4 and what isn't.

5 **THE COURT:** Well, I mean, impeachment is interpreted
6 as a challenge. The opponent can argue that it's inconsistent,
7 and the finder of fact can find that it's irrelevant. It's not
8 inconsistent at all.

9 **MR. GARDNER:** Understood, Your Honor.

10 **THE COURT:** That doesn't mean that we strike it or
11 something.

12 **MR. GARDNER:** I didn't ask to strike it, Your Honor.

13 **THE COURT:** That's fine. Your objection is noted.
14 Overruled. I'll determine if its inconsistent or not. If it's
15 not inconsistent, it has no effect on me at all. So just move
16 on.

17 **BY MR. STRAWBRIDGE:**

18 **Q.** Was that your sworn answer?

19 **A.** Yes, it was.

20 **Q.** We discussed earlier that the Naval Academy has never done
21 any model of what its demographics would look like if it
22 stopped using race, correct?

23 **A.** That's correct.

24 **Q.** And the only analysis of race-neutral alternatives that
25 the Academy has done that was identified in this case are

1 certain reports that you used the Academy's admission system to
2 determine if variables other than race would lead to a similar
3 racial composition for the class of 2026, correct?

4 A. I'm sorry. Say that again.

5 Q. Let me just put the interrogatory response up on the
6 screen here.

7 A. Yeah. Okay.

8 Q. So I'm going to bring up P285.

9 And if we go to page 7 of this document, you see
10 Interrogatory 6, "Identify all attempts the Naval Academy has
11 made to assess the effects of a race-neutral admissions process
12 would have on the racial composition of the brigade of
13 midshipman."

14 A. That's correct.

15 Q. Correct. And the Naval Academy -- in an interrogatory
16 answer that you signed, right?

17 A. Right.

18 Q. -- identified a series of informal reports using the AIS
19 system to determine if variables other than race would lead to
20 a similar racial composition for the class of 2026, correct?

21 A. That's correct.

22 Q. And then you cite, I think, five documents, right?

23 A. That's correct.

24 Q. And then it says that the Naval Academy determined that
25 none of these race-neutral alternatives would have meaningfully

1 increased the racial composition of the brigade of midshipmen,
2 correct?

3 A. That's correct.

4 Q. All right. I want to look at each of these documents for
5 a few minutes.

6 A. Okay.

7 Q. Let's bring up Plaintiff's Exhibit 347.

8 Can you see this document?

9 A. Yes.

10 Q. All right. This is one of documents that was referred to
11 in the interrogatory response?

12 A. Yes, it is.

13 Q. This is a profile of first-generation Americans, correct?

14 A. Correct.

15 Q. You generated this report, correct?

16 A. Correct.

17 Q. On September 16th, 2022?

18 A. Yeah. I think somebody helped me put it together.

19 Q. It says, "Generated by Stephen Latta."

20 A. Okay. Yeah, but I think I had help from one of the other
21 staff members.

22 Q. You looked at this report, right?

23 A. Correct.

24 Q. It's a list of students who had accepted their
25 appointments to the class of 2026 that the Academy had

1 identified as first-generation American, correct?

2 A. Correct.

3 Q. But you didn't run a similar report on all of the students
4 who had been identified as first-generation American who were
5 admitted but did not accept their offer, correct?

6 A. That's correct.

7 Q. And you didn't run a report on all qualified applicants
8 from the class of 2026 to see what that percentage of
9 first-generation American would have been?

10 A. That's correct.

11 Q. You only looked at the students who are already in the
12 class of 2026, correct?

13 A. That's correct.

14 Q. And other than the list of students who accepted
15 appointments and their race or ethnicity, there's no
16 calculation on here of the relative racial diversity of this
17 group, correct?

18 A. No, there is not.

19 Q. And you don't even remember if you wrote a calculation
20 down, correct?

21 A. No, I don't.

22 Q. Let's bring up P344. This is another one of the reports
23 that you prepared?

24 A. Correct.

25 Q. Referenced in the interrogatory answer?

1 A. Correct.

2 Q. This one identifies admitted students to the class of 2026
3 who were flagged by the Naval Academy as having some sort of
4 hardship or adversity?

5 A. Yes.

6 Q. And, again, you only ran this report on students who had
7 accepted their nominations, correct?

8 A. That's correct.

9 Q. You did not run a similar report on all applicants in
10 2026, did you?

11 A. I did not.

12 Q. And you did not run any report that captured any other
13 broader range of years than 2026, did you?

14 A. Correct.

15 Q. And although in this one, the identities of some
16 applicants as racial minorities are highlighted, there's no
17 actual calculation of the relative racial diversity of this
18 group on this document; is there?

19 A. No.

20 Q. I want to turn now to Plaintiff's Exhibit 345. This is
21 another one of the reports that was referenced in the
22 interrogatory response?

23 A. Yes.

24 Q. This time you pulled information about the applicants from
25 the class of 2026 who came from a home where language -- strike

1 that.

2 This is another report of the students who accepted their
3 nominations for the class of 2026 who came from a home where a
4 language other than English was spoken?

5 A. It's not nominations; it's -- those are the accepted
6 offers.

7 Q. I'm sorry. The accepted offers, right?

8 A. Correct.

9 Q. You didn't run a report for all the applicants for the
10 class of 2026, right?

11 A. Correct.

12 Q. And you didn't even run a report for all of the applicants
13 who received an offer and didn't accept it, correct?

14 A. That's correct.

15 Q. And, once again, there is no calculation of the relative
16 racial composition of the students on this list, is there?

17 A. No.

18 Q. Let's go to Plaintiff's Exhibit 343. This is another one
19 of the reports that you referenced in your interrogatory
20 response?

21 A. That's correct.

22 Q. It was also run with respect to people who accepted their
23 offers for the class of 2026?

24 A. Correct.

25 Q. And does this document even show the racial identity of

1 the students on this list?

2 A. No.

3 Q. And there's no other information in here that reflects a
4 calculation of what the relative racial demographic statistics
5 are of this group?

6 A. No.

7 Q. The last one is going to be Plaintiff's Exhibit 346.

8 This is run -- this is run on the class of 2027, correct?

9 A. That's correct.

10 Q. So this is the only one that wasn't run on the class of
11 2026?

12 A. I don't know if I gave you any other reports, but this --
13 yeah, this is the only one I've seen for '27 so far.

14 Q. It's the only one you identified in the interrogatory
15 response --

16 A. Okay. All right.

17 Q. -- that is from the class of 2027, right?

18 A. Okay.

19 Q. Okay. And, again, you only ran this on students who
20 accepted their offer, correct?

21 A. That's correct.

22 Q. And there's no calculation of percentages on here of the
23 racial demographics of this group, right?

24 A. Correct.

25 Q. And there's no similar report with respect to the

1 applicant pool as a whole?

2 A. Correct.

3 Q. And the Naval Academy to date has not identified any other
4 document discussing an analysis of race-neutral alternatives in
5 response to the interrogatory we looked at, correct?

6 A. Not to my knowledge, no.

7 Q. You don't remember having any discussion with your staff
8 about these reports that we've just looked at, do you?

9 A. I had a discussion with Christie Munnelly, who's the
10 director of candidate guidance, in looking them up, but I don't
11 remember specifically what we discussed.

12 Q. And there's no written document as to that discussion?

13 A. No.

14 Q. Dean Latta, would you agree with me that the Naval Academy
15 produces about 20 percent of the officers who enter the Navy
16 and Marine Corps every year?

17 A. The fact that I'm aware of is 28 percent of the
18 unrestricted line. That's the number that I'm aware of.

19 Q. All right. Let's go back to your declaration. This is
20 P259. And I believe you addressed this in your declaration in
21 paragraph 10, which is on page 5.

22 Do you see in paragraph 10, Dean Latta?

23 A. Uh-huh.

24 Q. Where you wrote --

25 A. Okay.

1 Q. -- "USNA is a major source of officer commissions for the
2 Navy and Marine Corps comprising approximately 28 percent of
3 new Navy and Marine Corps officers each year in the warfighting
4 communities and 16 to 20 percent of the overall officer corps
5 for both services."

6 A. Okay.

7 Q. That's what you said, right?

8 A. Right. I forgot when you asked me the question. That's
9 all.

10 Q. That's all right. So between 72 and 80 percent of new
11 Navy or Marine officers every year come from other sources?

12 A. Right. But that's not our role; our role is to pursue
13 unrestricted line officers.

14 Q. I'm asking you just generally about where the Navy gets
15 its officers from.

16 A. Right. Correct.

17 Q. Do you agree with me if 28 percent of the unrestricted
18 line officers coming from the Naval Academy, 72 percent of the
19 unrestricted line officers come from other sources? Correct?

20 A. Yes. Okay. The math is correct, I agree with you.

21 Q. And the other sources are primarily ROTC?

22 A. ROTC and OCS would be the two main sources of other
23 graduates that access in the URL.

24 Q. Right. And we're back in acronym world again. So ROTC is
25 the Reserve Officers --

1 **THE COURT:** Officer Training Corps, yes.

2 **BY MR. STRAWBRIDGE:**

3 **Q.** And OCS refers to Officer Candidate School, correct?

4 **A.** Correct.

5 **Q.** You also agree with me that more than half the officers
6 who graduate from the Academy today, with its use of race that
7 we've talk about so much in this trial, are White?

8 **A.** Yes.

9 **Q.** And so that means that approximately 400 to 450 officers
10 of color graduate from the Academy each year?

11 **A.** I haven't been tracking the graduation stats in my office.

12 **Q.** I'm going to just bring up P162 here.

13 **A.** Okay.

14 **MR. GARDNER:** Your Honor, we have a foundation
15 objection to using this exhibit with this witness. Maybe
16 Mr. Strawbridge can establish some foundation that he's seen it
17 before, but I'm not aware of that fact.

18 **THE COURT:** We'll see.

19 **MR. STRAWBRIDGE:** You know what? I'll actually take
20 this witness down.

21 **THE COURT:** That's fine.

22 **BY MR. STRAWBRIDGE:**

23 **Q.** You do not track the graduation rate of students admitted
24 to the Naval Academy?

25 **A.** Well, no. I -- certainly, I'm aware of our graduation

1 rate overall, but I don't -- in my office, my main role is to
2 access people in -- into the Academy. So I don't -- in terms
3 of the race and ethnicity and the backgrounds of all the
4 students and where they're going to every community is done by
5 somebody else at the Academy.

6 Q. Okay. But I assume that one of the things the Academy
7 cares about when it's admitting students --

8 A. Right.

9 Q. -- is whether they're going to graduate?

10 A. Right. I'm aware that our minority graduation rate is
11 very close to our overall graduation rate.

12 Q. So does that mean that, if minorities make up roughly
13 40 percent of the incoming classes, then they make up
14 40 percent of the graduating classes?

15 A. I would assume so.

16 Q. Do you know how many students approximately graduate from
17 the Academy every year?

18 A. We've been graduating a little over a thousand overall.

19 Q. Okay. So that means around 400 officers of color a year
20 if you carry that percentage through?

21 A. Correct.

22 Q. Do you agree with me that, because the Naval Academy only
23 provides between one-fifth and one-fourth of the officers who
24 join the Navy every year, the Academy alone has low leverage to
25 change the racial composition of the overall fleet officer

1 corps?

2 A. Again, I think we are -- I think our comparison is who
3 goes on the unrestricted line because that's what we've been
4 told by the CNO.

5 Q. Right. So --

6 A. So I think it's an irrelevant assessment because we're not
7 graduating people to go into the supply corps. Very few go
8 into doctors or other things. In fact, most of our students
9 that go into the other communities all have a physical
10 limitation. So it's not a fair comparison.

11 Q. Well, if you just talk about the unrestricted line, more
12 than 7 out of every 10 officers who join the unrestricted line
13 every year come from somewhere else than the Naval Academy?

14 A. But, in reality, the biggest value of the Naval Academy is
15 the retention rate. And we have the highest retention rate at
16 the 20-year mark of all the accession sources, and we have a
17 disproportion of all O6s and above who are graduates of the
18 Naval Academy.

19 Q. My question is just whether or not more than 7 out of
20 every 10 officers who join the unrestricted line every year
21 come from sources other than the Naval Academy.

22 A. Okay. I don't disagree with that.

23 Q. All right. You're familiar with the Boston Consulting
24 Group, correct?

25 A. That's correct.

1 Q. That's a consulting firm?

2 A. Yes. They're a private firm.

3 Q. Yes. It's a private firm that the Academy worked closely
4 with in 2022 to perform a marketing and strategic analysis?

5 A. Correct.

6 Q. And you were part of that effort, right?

7 A. They asked me some questions, yes. And I contributed to
8 the type of things that they were doing.

9 Q. You were among a number of Academy officials who were
10 interviewed by the Boston Consulting Group?

11 A. Right, that's correct.

12 Q. And you received their work product?

13 A. Yes.

14 Q. You cooperated fully with them, right?

15 A. Correct.

16 Q. You didn't give them any incorrect information, did you?

17 A. I don't -- yeah, but I'm not sure where they got the
18 information from.

19 Q. Well, I just asked you, when they interviewed you, you
20 answered their questions honestly?

21 A. Yes, I did.

22 Q. Did the superintendent cooperate with the Boston
23 Consulting Group's review?

24 A. I don't actually know that.

25 Q. Do you know whether the Academy's commandant did?

1 A. I assume he did, but I don't know.

2 Q. Do you know whether the Academy's director of strategy
3 did?

4 A. I believe he did, yes.

5 Q. In fact, you sent versions of the Boston Consulting
6 Group's report to some of your outside vendors, didn't you?

7 A. Yes, I did.

8 Q. You're familiar with Joy Media?

9 A. Who?

10 Q. Joy Media.

11 A. Correct.

12 Q. They do marketing work for the Academy?

13 A. Right.

14 Q. And you sent Joy Media a copy of this report in August of
15 2022, correct?

16 A. Correct.

17 Q. And you didn't flag for her that there were things in here
18 you disagreed with, right?

19 A. No. I sent the report to them because they specialize in
20 social media and to have them take a look at the social media
21 recommendations.

22 Q. Okay. I'd like to bring up Plaintiff's 330.

23 Is this the Boston Consulting Group report that we have
24 been talking about?

25 A. Yes.

1 **MR. STRAWBRIDGE:** Your Honor, I'd like to move to
2 admit this slide or this -- the document, Plaintiff's --

3 **THE COURT:** I assume this has been disclosed to the
4 opposing side and it's been premarked. Is that right?

5 **MR. GARDNER:** Yes, Your Honor.

6 **THE COURT:** No objection, is there?

7 **MR. GARDNER:** No objection.

8 **THE COURT:** Admitted into evidence.

9 **BY MR. STRAWBRIDGE:**

10 **Q.** I want to turn to page 37 of this report, Dean Latta.
11 This is a slide that was prepared by the Boston Consulting
12 Group as part of its analysis, correct?

13 **A.** Correct.

14 **Q.** And, actually, let me just go back to the beginning of
15 this so we can clear up some of the questions that I had for
16 you earlier.

17 This is -- the third page of this document notes that
18 Boston Consulting Group had robust participation from the USNA
19 team, correct?

20 **A.** Correct.

21 **Q.** And it lists the superintendent?

22 **A.** Uh-huh.

23 **Q.** Correct?

24 **A.** Correct.

25 **Q.** And it lists the commandant?

1 A. Correct.

2 Q. It lists Steve Vahsen, the executive director of strategy?

3 A. Right.

4 Q. And it lists you, correct?

5 A. Right.

6 Q. Along with a host of other people who are in the Academy
7 community, right?

8 A. Correct.

9 Q. So now let's go back to the slide on page 37.

10 The title of this slide that the Boston Consulting Group
11 determined was that "USNA alone has low leverage to change the
12 composition of the overall fleet officer corps," correct?

13 A. Correct.

14 Q. That's what the slide says, right?

15 A. That's correct.

16 Q. And that is because, with the Academy's current numbers,
17 it has limited ability to change the overall composition of the
18 fleet officer corps, right?

19 A. That's correct.

20 Q. That was BCG's analysis, correct?

21 A. Right. And, again, they were comparing against the entire
22 officer corps, not the URL.

23 Q. Well, they do note in the first bullet in Scenario A that
24 the Naval Academy generates approximately 28 percent of the URL
25 officer commissions, correct?

1 A. That's correct.

2 Q. And they walk through a couple scenarios here. One is
3 status quo, correct?

4 A. Correct.

5 Q. And then they talk about Scenario B, which is an
6 assumption that the Naval Academy could match the fleet
7 enlisted minority makeup?

8 A. Right.

9 Q. The demographics of the enlisted Navy, correct?

10 A. Correct.

11 Q. Do you know where they got the idea to make that
12 comparison?

13 A. I don't.

14 Q. Okay. And then Scenario C is an assumption that they
15 drive the officer corps to match the enlisted makeup. And the
16 Boston Consulting Group, with the data they were provided,
17 determined it was not possible for the Naval Academy alone to
18 raise minority representation among officers to match the fleet
19 enlisted share, correct?

20 A. That's correct.

21 Q. And they determined that non-USNA commissioning sources
22 are a critical factor to increase officer diversity, correct?

23 A. Correct.

24 Q. The next page -- I'm sorry. Two pages later in this
25 document that you sent to your outside consultants notes that

1 "Although military diversity numbers do not always mirror the
2 general public, a majority of all racial groups in the military
3 feel there is a high degree of inclusiveness."

4 And it reports some polling data here, correct?

5 A. I'm sorry. Say that again.

6 Q. Is the slide entitled "Although military diversity numbers
7 do not always mirror the general public, a majority of all
8 racial groups in the military feel there's a high degree of
9 inclusiveness"?

10 A. Okay. Yes.

11 Q. That's what it says?

12 A. Uh-huh.

13 Q. And they also noted on the bottom, "When you focus more on
14 inclusion, not representation, research indicates you'll do
15 better at maximizing the experience, productivity, and
16 potential of your team." Correct?

17 A. I'm sorry. Say that again.

18 Q. The Boston Consulting Group wrote in this presentation,
19 "When you focus more on inclusion, not representation, research
20 indicates you'll do better at maximizing the experience,
21 productivity, and potential of your team." Correct?

22 A. That's correct.

23 Q. I'd like to talk for just a few minutes about the interest
24 the Academy is relying upon in this case.

25 Let's bring up the interrogatory response again.

1 This is P293. And we're going to go to page 75, where
2 Academy was asked, "If you contend that USNA has a compelling
3 interest in using race in the admissions process, identify all
4 these compelling interests, state the basis for your
5 contention, and identify with particularity the facts
6 supporting your contention."

7 That's what the Academy was asked, right?

8 A. That's correct.

9 Q. And then I want to just -- to help guide our discussion, I
10 would like to go to page 79 of this document.

11 THE COURT: This is plaintiff's exhibit number what
12 again, please?

13 MR. STRAWBRIDGE: This is 293, Your Honor, their
14 interrogatory responses.

15 THE COURT: Thank you.

16 BY MR. STRAWBRIDGE:

17 Q. And at the first full paragraph at the top of this page,
18 there's a paragraph that indicates, "The armed forces have made
19 a strategic judgment that diversity, including racial and
20 ethnic diversity, at all levels is imperative. In particular,
21 as detailed below, the military has concluded that diversity in
22 the officer corps is vital to national security because it (1)
23 fosters cohesion and lethality; (2) aids in the recruitment of
24 top talent; (3) increases retention; and (4) bolsters its
25 legitimacy in the eyes of the nation and the world."

1 Is that right?

2 A. That's correct.

3 Q. Those are the interests that the Academy identified in the
4 response to this interrogatory, right?

5 A. That's correct.

6 Q. But, Dean Latta, would you agree with me that you cannot
7 say what level of racial diversity is necessary to foster
8 cohesion and lethality in the Navy?

9 A. No, I don't -- I can't --

10 Q. You cannot give me a number, correct?

11 A. No, I can't.

12 Q. And you cannot even give me a range, correct?

13 A. Correct.

14 Q. Nor can you identify for me the level of racial diversity
15 in the officer corps that is necessary to aid in the
16 recruitment of top talent, correct?

17 A. Correct.

18 Q. You cannot give me a number, right?

19 A. That's correct.

20 Q. And you cannot give me a range, correct?

21 A. Correct.

22 Q. With respect to the third interest in this interrogatory
23 response, you cannot tell me or this Court what level of racial
24 diversity in the officer corps is sufficient to increase
25 retention in the armed forces, can you?

1 A. No, I can't.

2 Q. You cannot give me a number, correct?

3 A. That's correct.

4 Q. And you cannot give me a range?

5 A. Correct.

6 Q. And with respect to the fourth interest that's identified
7 in the interrogatory response, you cannot tell this Court what
8 level of racial diversity in the Navy is sufficient to bolster
9 the armed forces' legitimacy in the eyes of the nation and the
10 world, can you?

11 A. Correct.

12 Q. You cannot give me a number, correct?

13 A. No, but all these questions are leadership questions.

14 Q. My question is you cannot give me a number, correct?

15 A. That's correct.

16 Q. And you cannot give me a range, correct?

17 A. That's correct.

18 Q. And you are one of the people who signed this
19 interrogatory, correct?

20 A. Correct.

21 **MR. STRAWBRIDGE:** No further questions at this time,
22 Your Honor.

23 **THE COURT:** Thank you very much.

24 And with that, cross-examination, Mr. Gardner.

25 **MR. GARDNER:** Thank you, Your Honor.

1 My thinking is, Ronda, about another half an hour and
2 we'll break for lunch?

3 All right. We'll go another half an hour, and we'll break
4 for lunch in about a half an hour.

5 **CROSS-EXAMINATION**

6 **BY MR. GARDNER:**

7 **Q.** Good afternoon, Dean Latta. You ready?

8 **A.** Yeah. Just let me get a drink of water.

9 **Q.** Take your time.

10 Dean Latta, I wanted to take you through the entire
11 admissions process in detail. But before we do so, I want to
12 ask you a few questions about your background.

13 **A.** Yes.

14 **Q.** Where did you attend college?

15 **A.** I attended the Naval Academy and graduated in the class of
16 1978.

17 **Q.** Why did you decide to join the military?

18 **A.** I'm sorry. Say that again.

19 **Q.** Why did you decide to join the military?

20 **A.** When I was in -- well, I came from a Navy family. My dad
21 was a pilot also. But when I was in high school, there were
22 two students ahead of me.

23 Thank you. I appreciate that. I can't see him.

24 There were two students ahead of me in high school that
25 were applying to the Naval Academy. And they -- they talked it

1 up pretty well and -- including what a great curriculum the
2 school had.

3 I was interested in math and science, and they had a
4 number of technical degrees that I would be interested in. My
5 dad was a pilot. And I was interested in aviation; so it
6 seemed like a natural fit for me.

7 Q. Do you hold any other degrees?

8 A. I hold a master's in management from the University of
9 Phoenix.

10 Q. Now, after you graduated from the Naval Academy, what did
11 you do next?

12 A. So when I graduated, I was selected for aviation as a
13 pilot. So I went through about two years of training in both
14 Florida and Texas, followed up by fleet replacement training in
15 the P3 community out in California, and then proceeded on to my
16 first tour out in Hawaii, had a couple of deployments as part
17 of that to the Western Pacific.

18 And following that tour, I was selected to be an
19 instructor pilot of the P3 training squadron back in
20 San Francisco. And I had a pretty successful tour there.

21 Moved on to what they called a disassociated tour out in
22 Japan, where I was embarked USS Blue Ridge as a member of the
23 7th Fleet staff. I had an opportunity to serve as the ASW
24 plans officer and the flag lieutenant to the commander during
25 the time I was there.

1 Following that, I had a staff tour in Washington, DC, as
2 an enlisted detailer; and back to Hawaii again for a department
3 head tour, where I was leading about 160 to 200 folks as a
4 maintenance officer in the squadron.

5 Let's see. What happened after that?

6 Then it was a couple of staff tours. Then on to command.

7 During the time I was selected for command, the community
8 was downsizing; so I actually did two executive officer tours
9 in P3 squadrons, composed of about 360 personnel and then
10 eventually into command. And, again, another set of
11 deployments out to the Western Pacific, Indian Ocean, Middle
12 East and supported operations there.

13 Following that tour, I served in the Office of Secretary
14 of Defense as -- in the military personnel policy director --
15 director of persons as a joint officer of policy expert and
16 then the military assistant to the deputy assistant secretary
17 of defense for military personnel policy.

18 Following that tour, I went to be the chief of staff for
19 the maritime Air Forces out in the Mediterranean, air wing
20 command down in Texas, and then ended up back at the Naval
21 Academy in the current position that I'm in.

22 Q. So how long in total did you serve as a naval officer?

23 A. About 28 years.

24 Q. At the time you began your first tour in the Navy in the
25 early 1980s, how racially diverse was your squadron?

1 A. Not very diverse at all, at least on the officer side. I
2 know there was a large representation of minority sailors in
3 the squadron. But to my knowledge, we had one other -- one
4 officer who was African American in that particular tour. And
5 my observation there was he wasn't treated very well. He was
6 somewhat isolated.

7 During the time I was there, there was a program in the
8 Navy to get rid of excess officers who were not performing
9 well. And he did not make it through his first tour and was
10 sent home. And unlike me, who had a mentor as a lieutenant
11 commander helping me through, he didn't really have anybody
12 helping him through his time in his first tour.

13 Q. Now, at that time, Dean Latta, the early 1980s, how
14 racially diverse was enlisted service members you were leading?

15 A. At least the division -- I started out as first
16 lieutenant. And almost -- there's probably 15 people. And
17 there are probably 12 or more racial minorities from all
18 different backgrounds and different parts of the country.

19 Q. And did you experience any challenges leading a racially
20 diverse squadron as a White officer?

21 A. Yeah, a little bit. I don't think the Naval Academy
22 prepared me well to serve. What I found is that I had a hard
23 type, at least initially, relating and understanding their
24 backgrounds and social values and getting them to do their job.

25 I actually had to have one of the senior enlisted help me

1 because I grew up in an environment where everybody did things
2 a certain way, and being able to lead them took a little bit of
3 extra training and help from somebody else who did have that
4 background.

5 Q. Now, I believe you testified on direct examination that
6 you began working at the Naval Academy in 2002 as an active
7 duty Navy captain, correct?

8 A. That is correct.

9 Q. And that position was in the office of admissions as the
10 director of admissions; is that correct?

11 A. That is correct.

12 Q. And you served in that position for approximately three
13 years until 2005; is that right?

14 A. That is correct.

15 Q. What were your responsibilities as the director of
16 admissions?

17 A. I was principally involved in running the staff. And I
18 was a member -- came in and became a full-time member of the
19 admissions board right off. During my initial time as director
20 of admissions, we also changed the selection process to a
21 committee. Prior to that, we had one person going through all
22 the congressional lists and what have you.

23 But I was running the staff in support of the dean of
24 admissions who developed all the policies and oversight serving
25 on the admissions board. I also taught ethics while I was

1 there on active duty.

2 Q. You just mentioned that, while you were the director of
3 admissions, you served as a member of the admissions board.
4 Did you also serve as a member of the slate review committee
5 while you were the director of admissions?

6 A. That's correct. So we -- like I mentioned earlier, we
7 didn't have a selection process; so we stood up a selection
8 process that included many of the people we've talked about
9 earlier today.

10 Q. I believe you testified to my colleague on direct that in
11 2006, you became the dean of admissions, correct?

12 A. That is correct.

13 Q. And when you became the dean of admissions, you retired
14 from the Navy; is that correct?

15 A. That is correct.

16 Q. Now, I think you testified to this on direct examination
17 that, as dean of admissions, you serve as a civilian employee,
18 correct?

19 A. That is correct.

20 Q. I believe you testified on direct that you were -- and I
21 think you were asked some questions about this -- that you
22 follow orders from the superintendent and the Department of
23 Defense as a civilian employee. Is that correct?

24 A. That is correct.

25 Q. I want to follow up on that question. Since you've been

1 dean, has there been any changes in directives from senior
2 military leaders regarding the consideration of race in the
3 admissions process?

4 A. Well, we've had -- you know, we've had several legal
5 reviews that have helped guide changes in our process during
6 the time I've been here.

7 The first was after the University of Michigan case done
8 by some senior lawyers in the Navy --

9 Q. I don't want you to disclose any privileged information.

10 A. Okay. So we have had -- on at least four occasions, we've
11 had detailed legal reviews.

12 Q. I want to ask you a few questions about some of the roles
13 and responsibilities of the various people, offices, and boards
14 involved in the admissions process. And I'd like to start with
15 you, sir, and your responsibilities.

16 What are your responsibilities as dean of admissions?

17 A. I have overall responsibility for the outreach and/or what
18 you might call the recruitment of students from across the
19 country, and that includes identifying students.

20 We actually -- our outreach efforts, you know, start, we
21 hope, in middle school but more pointedly in high school. And
22 that -- and from there, I'm also in charge of making sure that
23 all the students -- the admissions process has oversight and
24 performs the way it's supposed to legally.

25 It includes counseling of students who are in the

1 admissions process. It involves helping them complete their
2 applications. And it provides oversight to the admissions
3 board, which is -- what ends up happening, after the
4 applications are completed, I have oversight of the selection
5 process, which includes our slate review committee. And,
6 ultimately, I've delegated authority to make offers of
7 appointment from the superintendent and some limited ability to
8 make medical decisions.

9 Q. How large is the admissions office?

10 A. We have about 47 people, and that's a mixture of military
11 and civilian personnel.

12 Q. At a high level, what are the responsibilities of the
13 admissions office?

14 A. Well, again, we have three basic entities in there.
15 Candidate guidance's job is probably the largest group of about
16 20 people, and they do most of the candidate identification,
17 counseling, working with applications and processing their
18 applications to go to the admissions board.

19 We have a strategic outreach department that conducts --
20 that has responsibility for kind of connecting over our
21 outreach programs, which vary with different times during the
22 year.

23 And then we have our nominations, which heads up all of
24 our selection processes and oversees the medical process.

25 As a small organization, there's a lot of -- I call it a

1 matrixed organization because almost everything we do involves
2 many members of our staff working together.

3 Q. We've heard a lot so far about the admissions board, but
4 I'm not sure we have heard, how large is the admissions board?

5 A. In a given year, there's about 21 to 23 people who sit on
6 the board, and they represent a lot of different interests at
7 the Naval Academy. We find the diversity of experiences across
8 the board leads to the breadth of review and qualification of
9 all the candidates. That includes people who are prior
10 enlisted. It includes faculty and staff, military members,
11 different warfare specialties, for example. And we have senior
12 officers and junior officers as well.

13 Q. How long do members of the admissions board typically
14 serve?

15 A. Typically, we like to see people seat -- serve for three
16 years. And like many boards that you see in the military,
17 there's always turnover due to rotation. So in a given year,
18 we might turn over 20 to 30 percent of the board, particularly
19 with military members. But three years would be our goal. It
20 maintains continuity and corporate knowledge on the board and
21 how they review everything.

22 Q. And what are the responsibilities of the admissions board?

23 A. Well, the primary responsibilities are to take the
24 applications that have been completed and have been processed
25 by the admissions staff. They're to review the applications,

1 and they're to provide recommendations on each individual's
2 qualifications for admission. And that can include being
3 qualified.

4 As we stated earlier, that -- qualified may include a
5 recommendation of what we call early notify. And that early
6 notify is the pool of candidates that we would normally look at
7 for letters of assurance. They can determine a candidate is
8 not qualified for admission. And in our terms, different than
9 other schools, it just means that we don't think they're ready
10 to start freshman year at the Naval Academy.

11 And they can also make a recommendation as part of the
12 process for a student to go to a preparatory program, or they
13 can just ask for more information. We call that "deferred" in
14 our process.

15 **Q.** How are applications assigned to members of the admissions
16 board?

17 **A.** So our process, the application process, is actually
18 electronic -- electronically driven. And it starts with -- so
19 the computer assigns them essentially randomly to whoever needs
20 an application sent to them. So there's no parsing to
21 particular members of the board.

22 There are a couple of exceptions because of the need for a
23 specialized skill. For example, all of our homeschool
24 candidates, we have one board member brief those. Our athletic
25 records are processed and briefed to the board by our athletic

1 rep. Our fleet candidates are -- we have a fleet
2 representative in our office who works with sailors and Marines
3 who gets all the fleet candidates.

4 And then the ones that are post-high school, we call them
5 college candidates even if they're taking a gap year. And
6 those are all looked at by our civilian professors who sit on
7 the board.

8 And I failed to mention earlier, but civilian professors
9 sit on the board. They represent all the different academic
10 interests at the Naval Academy as well as our military members.

11 Q. Is a particular admissions board member assigned to review
12 the applications from all minority applicants?

13 A. No.

14 Q. I want to talk briefly about the slate review committee.
15 What are their responsibilities?

16 A. So the applications that are processed by the admissions
17 board, when they're done -- and, again, the admissions board
18 starts meeting at the beginning of September, and oftentimes
19 nominations are not in there. So they go to kind of an
20 electronic holding bin.

21 And then slate review committee, when it begins its
22 deliberations, they will look at the various lists. And most
23 of those, obviously, are from members of Congress. And their
24 role is really a couple of things. Number one, they're trying
25 to make decisions on every congressional vacancy on who gets

1 offered an appointment and what have you.

2 They -- part of their process is, not also to pull records
3 up and verify that there were no mistakes made at the
4 admissions board, in some cases they'll send records back to
5 the board for another look and what have you. And then, again,
6 the slate review committee also includes the regional team
7 members who come up to brief records.

8 Q. Who serves on the slate review committee?

9 A. Yeah, kind of what we call the corporate members are the
10 director of candidate guidance, who also serves as the
11 secretary of the admissions board; the director of nominations
12 and appointments; and myself.

13 And then for the various regions -- for example, when
14 we're looking at the records from a state like South Carolina,
15 the person who is responsible for South Carolina will come up
16 as part of that committee to go through the records with the
17 rest of the staff as the resident expert.

18 And one of the reasons they're there is because they've
19 been working with the candidates and what have you. If there's
20 any follow-up -- for example, one of the things -- because
21 oftentimes we look at -- the first time we'll look at a
22 congressional slate, a number of the application files may be
23 incomplete. So we won't make a decision on the slate; we'll
24 actually -- that person will go back and will try to find the
25 records and make sure they get to the board. And we may come

1 back several weeks later and look at the congressional slate,
2 sometimes two or three times, until all the records are
3 complete to be considered for admission.

4 Q. You mentioned the director of candidate guidance and the
5 director of nominations. Just briefly, what is the role of the
6 director of candidate guidance?

7 A. So our candidate guidance director has -- they're kind of
8 the working group in the office that works directly with the
9 candidates. So they're -- again, they do a lot of recruiting
10 as well. They all are assigned to regions.

11 We have five different regions that the country is
12 involved in. And most -- and every region includes a person
13 who processes the applications and two or three officers and
14 the civilians that go out and do all the recruiting.

15 But they work directly with the candidates not only to get
16 them interested but to help motivate them through the
17 admissions process, to work with them to make sure their -- not
18 only their file is complete, but they provide them advice,
19 particularly early in the year. And early in the year might be
20 to go back and retake SATs or the candidate fitness assessment.
21 But, eventually, they're trying to get the applications
22 completed and moved up to the admissions board.

23 And, again, they go to the admissions board. The
24 admissions board completes their work. And then, again,
25 there's kind of an interlap again with the candidate guidance

1 when the slate review committee meets.

2 **Q.** And just one last framework question for you.

3 What's the role of the director of nominations?

4 **A.** So our nominations director receives -- she works directly
5 with the different congressional offices, particularly with the
6 staffers, in making sure that all the nominations are received.
7 They actually spend a lot of time doing housekeeping when
8 they're received because sometimes members of Congress send
9 them in in a very confusing format using the three different
10 methods.

11 They advise them on the number of open vacancies that they
12 have. And if they try to offer too many vacancies, they'll
13 often advise them to recalibrate their efforts and what have
14 you. But, eventually, she puts together the congressional
15 lists and other nomination sources and brings those in to the
16 slate review committee and identifies the open vacancies and
17 what have you. And then when the selection are done, they take
18 care of notifying all the members of Congress.

19 **Q.** And currently the director of nominations is?

20 **A.** Melody Hwang, who was in here earlier today, yes.

21 **MR. GARDNER:** Your Honor, I'm happy to keep going, but
22 I am going to change topics. Would you like to break for lunch
23 now?

24 **THE COURT:** This might be a good time to break for
25 lunch, then. And we'll break for lunch. It is now not quite

1 quarter after. I'm going to break for lunch until quarter
2 after 2:00. This Court stands in recess.

3 And, Dean Latta, you should not discuss your testimony
4 with anyone while you're on the witness stand. The safest
5 thing to do is to have lunch by yourself; otherwise, you'll be
6 dragged into a conversation. You don't want to be talking with
7 anybody while you're on the witness stand.

8 So with that, we'll stand in recess until quarter after
9 2:00.

10 (A recess was taken from 1:11 p.m. to 2:20 p.m.)

11 **THE COURT:** Good afternoon, everyone. You all may be
12 seated.

13 During the break, I reviewed Plaintiff's Exhibit 491,
14 which, as produced to the plaintiff by the defendants,
15 contained 18 redacted pages, I think, reflected at least in the
16 one document Bates numbers -- Bates Stamp Numbers 701 through
17 716 and 759 through 760.

18 Those pages followed slides titled "USNA Admissions Legal
19 Overview, August 2023," from Captain Andrew House and the judge
20 advocate general there at the Naval Academy and legal review
21 takeaways respectively.

22 Counsel for the Plaintiff, Mr. Mortara, suggested that
23 there perhaps had been a waiver of any privilege asserted as to
24 those documents based on Ms. Hwang's testimony. And I've
25 reviewed the materials.

1 This clearly is privileged material within the
2 attorney-client privilege, and I don't find there's been any
3 waiver based on her testimony.

4 So I've dealt with that, and the record will so reflect on
5 that.

6 So unless there's anything further, Mr. Mortara, we'll
7 continue --

8 **MR. MORTARA:** Nothing further from us on that.

9 **THE COURT:** Mr. Gardner, you may continue.

10 And, Dean Latta, you're still under oath.

11 **MR. GARDNER:** Thank you, Your Honor.

12 And my colleague, Ms. Yang, is just going to excuse --

13 **THE COURT:** Yes. Ms. Hwang, again, just bring her
14 back in the courtroom. I want to thank her -- I want to thank
15 all people who have testified for their military service. Just
16 give us one second here.

17 **MR. GARDNER:** Of course.

18 **THE COURT:** Ms. Hwang, thank you very much for your
19 testimony here today. I had to review some matters at lunch.
20 There's no reason for you to return to the witness stand right
21 now, and I want to thank you for your military service as well,
22 as I'm thanking all veterans here. Although I know you're now
23 in civilian capacity, I want to thank you, and thank you very
24 much.

25 **MS. HWANG:** Thank you.

1 **THE COURT:** You're excused. You should just remain
2 available in case we need to call you back some other time
3 during the trial, but thank you very much.

4 With that, Mr. Gardner, we're ready to proceed with Dean
5 Latta.

6 **MR. GARDNER:** Thank you, Your Honor.

7 **BY MR. GARDNER:**

8 **Q.** Dean Latta, now that we've gone through some of the roles
9 and the responsibilities, I want to walk through the admissions
10 process in some detail.

11 What are the steps an applicant must take to apply to the
12 Naval Academy?

13 **A.** Well, first off, they have to fill out a preliminary
14 application. We -- another step involves providing college
15 entrance exams. They have to obtain the nomination, pass a
16 physical fitness test, get a blue and gold interview. And did
17 I say nomination?

18 **Q.** You did.

19 **A.** And medical examination.

20 **Q.** Now, I think some of these steps, you covered with my
21 colleague. But I want to go into a little more detail.

22 What information is requested on the preliminary
23 application?

24 **A.** So it's a basic opening application. It includes,
25 obviously, the person's name, their address, their birthdate,

1 their gender, race and ethnicity, their congressional district,
2 if they're interested in being recruited for sports. We ask
3 them initial information about what their major interest is and
4 their class rank if they provide it.

5 Q. Why does the preliminary application ask about the
6 applicant's race or ethnicity?

7 A. Well, we follow the O&B rules and DoD guidance.

8 Q. And what do the rules and guidance require in terms of
9 race and ethnicity reporting?

10 A. They require us to ask for that information from each
11 applicant.

12 Q. How does the Naval Academy used the race and ethnicity
13 information reflected in the preliminary application?

14 A. It really does not. So the preliminary application is an
15 opening application. And if they meet a couple basic
16 requirements -- and that is actually age -- there's an age
17 requirement codified in Title X. You can't be younger than 18,
18 and you can't have hit your 23rd birthday. And you have to be
19 a U.S. citizen by induction day.

20 If they meet those two requirements, then we designate
21 them a candidate, and they can proceed to fill out the
22 remainder of the application.

23 Q. All right. So once an applicant completes the preliminary
24 application, then what happens next?

25 A. Well -- so the rest of this is a little bit nonsequential.

1 So, essentially, they -- if they're designated a candidate,
2 then they will receive an email from us with their candidate
3 number, obviously, and directions on how to log in to what you
4 might call a student portal. We call it the candidate
5 information system.

6 And in that candidate information system, there's a number
7 of forms or steps that they need to complete, one of which is
8 to get a form called the candidate academic information
9 submitted by their counselor, their transcript. They'll need
10 recommendations from a math and English teacher. We ask them
11 for an essay and some additional personal history
12 questionnaire, questions such as unusual life experiences,
13 overcoming hardship, adversity, information to provide us on
14 their background, language fluency, tie to their cultural
15 heritage, financial status, et cetera.

16 There's also a candidate activities record that we request
17 they fill out that must be validated by a school official,
18 which usually is the college counselor. And then there's a
19 link to their blue and gold officer, who will be required to
20 give them an interview and also their regional counselor as
21 well. And I don't know if I mentioned the math and English
22 teacher.

23 There's also links in there -- we do not require
24 additional letters of recommendation, but they can submit them
25 on their behalf as well.

1 And the portal also includes any college board exams we
2 may have received as well as if we've received their
3 nomination, it will be depicted in there, as well as their
4 medical status.

5 Q. Dean Latta, why does the Naval Academy ask students to
6 submit an essay?

7 A. Well, an essay is extremely important. And, again, our
8 process is a holistic review. It relies on what we call the
9 whole-person multiple. But part of that holistic review is to
10 get a sense of the person. It's one of the few things we see
11 that they actually submit on their own. So we get some insight
12 into, obviously, not only their ability to write, but their
13 thinking. And they -- we ask them about their motivation to
14 serve, what got them interested in the Naval Academy, as well
15 as to describe a character-forming experience.

16 And often that provides a lot of information on other
17 things that we would use to evaluate subjectively in their
18 evaluation. That can include, you know, some life experiences
19 affected them deeply in their moral development and what have
20 you.

21 But the essay provides a lot of insight into their
22 background that helps us make an assessment of their overall
23 whole person.

24 Q. Do the essays ever reflect instances of overcoming
25 hardship?

1 A. Absolutely. And it's not only hardship; that's where we
2 often find out income, about low socioeconomic status, life
3 experiences. It runs the gamut. We don't tell them what to
4 say, but we do want them to use their minds to tell us
5 something. But it can be very insightful. And it can actually
6 include becoming a leader of a team and then failing as a
7 leader and how they've done that.

8 A great example of a student that we had on a personal
9 statement that really impacted the board was actually a kid who
10 was the class president. And he was not a particularly great
11 student in school. In fact, he was ranked in the middle of the
12 class. But during the time he became class president, his --
13 the school system in this community he was in merged between
14 the junior high and the high school. So he actually talked
15 extensively about his ability to work with the mayor, the PTA,
16 the class, the junior and high school leaders, and what have
17 you about that.

18 And it actually was very impactful to our admissions board
19 and helped us form probably a different decision than we would
20 have made on him if we had not known that information.

21 Q. You mentioned this was a student that didn't have great
22 grades but had other attributes?

23 A. Yeah. He -- my recollection, he was ranked in the middle
24 of the class. It actually led to him being offered an
25 opportunity to go to prep school because his grades were not

1 particularly good.

2 Q. How typical, Dean Latta, is it to see essays that discuss
3 overcoming hardship?

4 A. Quite often. In fact, that's -- it's a moral
5 character-forming experience. So, you know, I've had -- for
6 example, we had a student one year that was not involved in any
7 activities in school, very high class rank, very low SATs; but
8 in her essay she talked extensively about how her family --
9 both parents had lost their jobs and the family was essentially
10 homeless and they were living in a car.

11 But she had -- you know, she had impressed her school
12 leaders. But she overcame that hardship to study harder and do
13 well in school and what have you. That actually helped build
14 the rest of the profile on the candidate because, otherwise,
15 without a lot of extracurricular activities, you know, her
16 overall score at the board was not very high. So that helped
17 paint the rest of the picture.

18 And that's a lot of what the personal statements do, is
19 they help paint the bigger picture of a candidate that we're
20 looking at.

21 Q. So in that circumstance you just shared where you had a
22 student with relatively low scores but other attributes, was
23 that student given an offer?

24 A. That student was given an offer in NAPS. We had another
25 student that actually got a direct offer. And this was a

1 student who was captain of her soccer team. And at the
2 beginning of her senior year, the coach became very ill with
3 some sort of illness that couldn't coach the team for the rest
4 of the year. So she effectively turned into the team coach and
5 actually talked about leading her team to the league
6 championship and then going off to states and what have you.

7 That was another example of a student who had average
8 grades, ranked in the middle of the class, but it impressed the
9 admissions board to the point that they felt that we should
10 consider her for a direct offer of appointment.

11 Q. You had mentioned a few minutes ago that essays can often
12 reflect the discussion of socioeconomic status.

13 How typical is it to see essays that discuss socioeconomic
14 status?

15 A. It's actually quite common. In fact, that's often a
16 dominant factor with many of our students who have SES-type
17 issues. And that can range anywhere from having to quit
18 extracurricular activities and going to work to support their
19 family to parents becoming ill, having to take care of
20 siblings.

21 It could be their own illnesses they've overcome or taking
22 care of a fellow sibling who has a mental or physical
23 impairment growing up and what have you. It can be growing up
24 in a single-parent home.

25 Again, the breadth of things that students tell us about

1 themselves cannot be underscored in their personal statements.

2 Q. I think you've largely addressed this, but just so that we
3 have a clean record, can the essays be important in making
4 admissions decisions?

5 A. It certainly can. It can help inform an admission
6 decision, certainly. And, again, it's not a part of our
7 whole-person multiple other score that is actually a graded
8 component in it, but it provides a very subjective part of that
9 whole-person assessment that helps inform decisions.

10 Q. So the consideration of the essays is something that takes
11 place outside the whole-person multiple?

12 A. Yes. The multiple -- and, again, the multiple includes a
13 lot of objective factors like class rank and SATs and grading
14 the activities records. But most of the written words that are
15 in anybody's application file are oftentimes hard to quantify
16 in a score and what have you. So it takes an evaluation by an
17 experienced board member to determine what that value is.

18 Q. Now, Dean Latta, I think you mentioned earlier that the
19 Naval Academy requests personal history and family background
20 information from applicants. Is that right?

21 A. That's correct.

22 Q. Why does the Naval Academy ask applicants to provide
23 personal history and family background information?

24 A. Well, again, I look at every candidate individually.
25 That's how our admissions board does it. And, again, we're --

1 at the end of the day, it's great to have great academicians, but
2 we're looking to produce people who we think are going to lead
3 in the Navy and Marine Corps after graduation who can
4 successfully complete the curriculum at the Naval Academy.

5 So when you look at the rest of the stuff, all these other
6 things we provide, like unique life experiences, sometimes we
7 find out the kids lived overseas for 13 or 14 years and has
8 learned three or four different languages. Hardship, they tell
9 us a lot about their overcoming adversity and hardship.

10 Financial status, which is self-reported, of course.

11 Their language skills. Where their parents are from. Are
12 they the first in family to attend college, for example, or
13 first-generation American? All those things provide value and
14 what have you. And oftentimes they'll tell us they're actively
15 involved in promoting the cultural values that have been imbued
16 on them by their parents.

17 **Q.** So outside of the personal family background information
18 that you request, does the application specifically ask about
19 whether English is a second language?

20 **A.** Yes. It says something to the effect was the primary
21 language you first learned English? Yes or no? But we also
22 ask additional questions on language skills. And even if the
23 student doesn't identify it there, we may get it from that
24 question. Or, oddly enough, sometimes school officials or
25 their bilingual office or somebody else who knows this will

1 tell us if it's a second language.

2 Q. And outside of the personal and family history questions,
3 does the application specifically ask for family income?

4 A. Yes.

5 Q. If that information is already specifically requested,
6 meaning family income, English as a second language, then
7 what's the point of an additional question about personal
8 history and family background?

9 A. Well, again, students don't always tell us everything at
10 one area of the application. So the family background may be
11 other things, like are they tied to their cultural heritage?
12 Are they carrying on their traditions from their family at
13 home? It can tell us about whether they come from a
14 single-parent home, if either parent has gone to college, for
15 example. That's one of the things that we help identify if
16 they're coming from a single-parent home or they're first in
17 the family to attend college.

18 All that information helps -- again, we're painting a
19 picture of each person. And the more information we can fill
20 in, the brighter that picture actually becomes.

21 Q. And, Dean Latta, can an applicant's personal history and
22 family background be important to making admissions decisions?

23 A. It is. Again, it's important to help us understand all
24 the things we're looking for in leaders. And, again, people
25 who graduate from the Naval Academy are expected to perform on

1 a team. We're looking for people who can time-manage, have
2 organizational skills.

3 If they've already come over adversity or hardship,
4 oftentimes we see a big jump in maturity and that student being
5 able to handle stress a little bit better. Those are things
6 that are important in the military environment as well.

7 Q. Could you give me an example of where a personal history
8 and family background was important in making an admissions
9 decision?

10 A. This might be a -- more of a character-forming experience,
11 but we had a student who had -- who had qualified at the board
12 but had a fairly low whole-person multiple.

13 And he demonstrated some unusual character in an incident
14 in his home where his sister had been dating a Marine who had
15 been discharged and had posttraumatic stress disorder. The
16 sister tried to break off the relationship at one point. The
17 ex-Marine did not take it well and actually came to the house
18 and tried to break in to kill his sister.

19 He actually was standing in the kitchen, had no idea what
20 was going on but saw him trying to break into the house,
21 intercepted the young man. He was actually stabbed several
22 times but saved his sister. And the Marine ended up leaving
23 the house.

24 But in this case my recollection is the admissions board,
25 you know, was so impressed by that that they felt that this is

1 the type of person we want in our school because we thought he
2 would make a great officer in whatever service he went to after
3 graduation.

4 Q. Is information in the applicant's personal history and
5 family background always captured in the RABs or
6 recommendations of the admissions board?

7 A. No, not at all. In fact, oftentimes a lot of these
8 factors are noted by the admissions board. And they're --
9 maybe they're not always captured in numbers or they sometimes
10 get captured in one category and not the other. One of the
11 areas we find, for example, we don't do a particularly good job
12 of capturing is socioeconomic status. Oftentimes, that's
13 intertwined with some hardship or unusual life experience, and
14 so that might be what the board identifies in point values.

15 But all that stuff is discussed at the board. It's
16 annotated on their record so that, when we open their record,
17 we're going to consider them for an offer on whatever
18 nomination list we're looking for, we will actually review all
19 that information as well and try to help that form a decision
20 when we're comparing that person to other candidates that we
21 may be considering.

22 Q. Does the application provide an opportunity for applicants
23 to identify whether they're the first in family to attend
24 college?

25 A. Yes.

1 Q. Does the application provide an opportunity for applicants
2 to identify whether they're first-generation American?

3 A. Yes.

4 Q. Does the application provide an opportunity for applicants
5 to identify whether they've received hardship funding, such as
6 government assistance?

7 A. Yes. And usually in the same area of the application that
8 they can indicate their family income, we ask them to explain
9 that. If they don't explain it or provide that, we often will
10 get it from school officials who can indicate that in their
11 write-up. But it also comes from other places, for example,
12 their blue and gold officer, and sometimes from a letter of
13 recommendation from somebody else who's observed them.

14 Q. Does the application provide an opportunity for applicants
15 to identify whether they've had an unusual life experience?

16 A. Correct.

17 Q. Does the application provide an opportunity for applicants
18 to identify whether they come from a single-parent household?

19 A. Yes.

20 Q. So, Dean Latta, we've just talked about a lot of different
21 information. Why does the Naval Academy application ask for
22 all of this information?

23 A. For exactly the reasons I just explained. We have --
24 probably the best way to explain it, we're doing a holistic
25 process. We have a whole-person multiple that's an excellent

1 tool for comparing candidates. But if you think about it, we
2 have a one-size-fit-all tool that works across the entire
3 country in several different types of school systems,
4 curriculum, and all that.

5 So the other things that we have in there actually help
6 provide context to everything that we're reading in the file.
7 And it goes much farther beyond than just reading a bunch of
8 numbers in their transcript or the types of activities that
9 they're doing.

10 Q. You mentioned earlier, I think, that an applicant also
11 must complete and pass a candidate fitness assessment. Is that
12 correct?

13 A. That's correct.

14 Q. What is a candidate fitness assessment?

15 A. So that is a common physical fitness test that is
16 administered by four of the five service academies. So
17 Merchant Marine, West Point, Air Force, and us administer the
18 same test. Coast Guard has a physical fitness test that's
19 similar but not the same. But it's designed to measure
20 physical prowess, for example, and ability and agility for use
21 in our admissions system.

22 Q. You also mentioned that applicants must submit, I believe,
23 a candidate academic information form, or CAI. Is that right?

24 A. That's correct.

25 Q. And who's responsible for completing the CAI form?

1 A. It's a school official. Most of the time it comes from
2 the college counselor in the school. Occasionally, we'll see
3 the principal or some other official fill that out.

4 Q. What information is requested on the CAI form?

5 A. Right. So the CAI obviously includes the person
6 submitting the information. But they'll include the person's
7 class rank, whether it's weighted or not. They'll include
8 their GPA, particularly in -- many schools nowadays do not use
9 class rank anymore; so they'll provide their GPA and if it's
10 weighted. We ask information about what kind of curriculum
11 they have, whether it's an AP or honors courses. IB program is
12 popular in many parts of the country.

13 They can indicate if they're a minority group or a
14 disadvantaged background. The counselor also can provide
15 information on whether there's been disciplinary issues in the
16 school or whether they're on an IEP. And there's a big block
17 in there that they can fill in to describe the student.

18 And oftentimes the counselor, who has visibility with a
19 number of people in school, particularly if the person has been
20 a leader or standout in the school, provide a very nice
21 write-up on all the attributes of the individual involved.

22 Q. Does the CAI request information about the percentage of
23 students who are matriculating to two- and four-year schools?

24 A. Yes.

25 Q. Why does the Naval Academy require the submission of a CAI

1 form?

2 A. Well, again, information from the CAI feeds directly into
3 the whole-person multiple, particularly the class rank. And if
4 the class rank is not provided, the GPA does. But the rest of
5 the information the counselor provides is a very subjective
6 part of our process.

7 Q. Is there information contained in the CAI form that the
8 board considers outside of the whole-person multiple?

9 A. Yes.

10 Q. Now, you mentioned that the CAI form asks for information
11 on whether the applicant is a member of a minority group or
12 comes from a disadvantaged background, correct?

13 A. That's correct.

14 Q. Why does the Naval Academy ask for that information?

15 A. Well, that has been part of our application for a number
16 of years. My sense is the reason that was started was to help
17 provide context to a person's background. And sometimes we get
18 kids that we have other information in the record even if they
19 haven't indicated that they are from a different background and
20 what have you.

21 Disadvantaged background is the other block they can
22 check, and there's usually an explanation that goes to that.
23 But that often is used to identify students who are on free or
24 reduced lunch, WIC, and some of these other financial
25 assistance programs. Counselors are usually pretty forthcoming

1 in telling us if they're on financial assistance as well.

2 Q. Is the race information contained in the CAI used to make
3 qualification decisions?

4 A. No.

5 Q. Now, another item you mentioned that the CAI form asks
6 about is advanced courses, such as taking advanced placement
7 courses, correct?

8 A. Correct.

9 Q. Why does the Naval Academy ask about whether an applicant
10 has taken AP courses?

11 A. Well, I think the -- if you go back to -- our school is an
12 extremely difficult school to succeed in. Students have to
13 have a strong foundation in math and science in particular but
14 across the board to not only succeed in the first year but
15 beyond the first year.

16 And so it's very important that we get a pretty good
17 feeling of the rigor of the curriculum in there to make sure
18 that they have the academic background they need to succeed in
19 the first year.

20 So asking that information helps provide context in
21 looking at their academic credentials and what have you.
22 Again, a lot of students, despite the schools that they go to,
23 the AP courses and our courses have a different level of rigor
24 most often than, for example, the college prep curriculums that
25 you see.

1 Q. May the admissions board adjust the whole-person multiple
2 to account for a candidate taking AP or IB courses?

3 A. Yes.

4 Q. Is that recommendation of the board adjustment, the RAB
5 adjustment, automatic or manual?

6 A. It's generally manual because it takes an evaluation of
7 the person's transcript as well as looking at the candidate
8 academic information form to determine what kind of an
9 adjustment would be made, if any is made at all.

10 Q. Now, Dean Latta, are there some high schools that don't
11 offer AP or IB courses?

12 A. That's correct.

13 Q. How, if at all, does the Naval Academy account for the
14 fact that some students don't have access to AP or IB courses
15 when you're considering candidates?

16 A. Well, we look at their entire academic credentials, and
17 oftentimes we'll find those students may be getting -- going to
18 dual credit outside of the class. It's very common for
19 students across the country now to seek higher, more rigorous
20 courses when the school doesn't offer it as well.

21 The other area that it can play into is class rank.
22 Sometimes the schools, if they don't have that, the class rank
23 can be very helpful to us as well. There are some schools that
24 actually will -- so I should probably put some context to this.

25 As part of the CAI is that we request the school officials

1 to provide what they call a profile of the school. And they
2 will actually tell us the rigor of the curriculum on that
3 profile that helps our board evaluate the overall candidate's
4 ability to be able to start our school.

5 Q. Dean Latta, is it important to the Naval Academy that to
6 be able to consider an applicant's AP and IB coursework?

7 A. Yes. And, again, it's about first-year success. The
8 whole-person multiple was designed to reduce first-year
9 attrition at the Naval Academy and what have you. And we've
10 done a number of analysis over the years to determine how well
11 it's performed across the spectrum. So the AP and honors
12 courses have actually helped contribute to the breadth of the
13 whole-person multiple.

14 Q. Dean Latta, it has been suggested by plaintiff's expert
15 that the consideration of IB and AP courses could disadvantage
16 minority students who may not have access to those courses.

17 What's your reaction to that criticism?

18 A. I don't buy into it, mainly because almost every school
19 I've been to -- and many of these are in the inner-city areas
20 of the U.S. that have not a lot of students matriculating into
21 college and what have you. And they always seem to find a way
22 to get access to the courses that they need.

23 And even in a disadvantaged area, a lot of them will apply
24 and go to a magnet school or competitive entry school or often
25 the Catholic schools inside some of the socioeconomically

1 deprived areas provide a very good education. But the students
2 will seek out the courses they need to prepare.

3 And, again, part of that is talking to our staff. And our
4 staff will actually advise them on what kind of classes that
5 we're looking for and what have you.

6 Q. I think you mentioned earlier that the Naval Academy also
7 requests information about an applicant's participation in
8 athletics, correct?

9 A. That's correct.

10 Q. Why does the Naval Academy seek information on athletic
11 activities?

12 A. Well, I think it comes back to what are we trying to do?
13 We're trying to produce leaders. The military is very much a
14 teamwork thing. And so sports often provides the type of
15 training somebody needs to have to prepare them to go to the
16 environment they're going to be at. Especially if they're on a
17 team sport, they're already learning how to work with other
18 people. They're developing communication skills.

19 All sports requires a certain amount of time management
20 and persistence. It helps kind of develop that warrior ethos
21 that we're looking for and what have you. And we actually
22 have, I think, pretty good success looking for varsity -- we
23 don't recruit varsity athletes, but more than 90 percent of our
24 class are students that have participated in varsity athletes
25 every year.

1 Q. Can RAB points be given for participation in athletics?

2 A. Yes, particularly if they're involved in something that is
3 way above and beyond what's offered at the school or in a
4 particular activity.

5 Q. In making RAB adjustments to the whole-person multiple,
6 does the Naval Academy limit its consideration of athletics to
7 certain sports?

8 A. No. Almost every sport has a value. Again, sailing, for
9 example, doesn't require a lot of running and what have you,
10 but it's a great teamwork thing. In fact, our midshipmen
11 actually go on sailing cruises to develop teamwork in small
12 group unit training and what have you.

13 So even that sport that may look a little different than
14 football or soccer or whatever, those kids are learning how to
15 manage their time. And, frankly, the environment sailors are
16 in oftentimes is very adverse with weather; so it has a context
17 for us.

18 Q. Dean Latta, plaintiff's expert has criticized the Naval
19 Academy for giving RAB points to those participating in certain
20 sports such as sailing, rowing, or water polo because it tends
21 to disproportionately advantage nonminority students over
22 minority students.

23 What's your reaction to that criticism?

24 A. Well, we have minority students in all of those sports as
25 well. But there's other sports that are actually

1 disproportionately represented by minority students, and
2 particularly football and track and basketball have large
3 percentages of their sports dominated by minority students.

4 Q. I'd like to take a look at an exhibit, Defendants'
5 Exhibit 79.

6 And when I'm doing that, I realize I did not hand out the
7 binders.

8 Dean Latta, do you recognize Defendants' Exhibit 79?

9 A. Yes. This is a PowerPoint presentation for the admissions
10 board training.

11 Q. I want to use this document as a tool, Dean Latta, to walk
12 the Court through the admissions process step by step. And I'd
13 like to start at PowerPoint page 2 of this exhibit.

14 A. Okay.

15 Q. Could you please read this, Dean Latta?

16 A. I'm sorry. Say that again.

17 Q. Could you please read this?

18 A. Yeah. It's the U.S. Naval Academy mission. It's to
19 "Develop midshipmen morally, mentally, and physically, and to
20 imbue them with the highest ideals of duty, honor, and loyalty
21 in order to graduate leaders who are dedicated to a career of
22 naval service and have potential for future development in mind
23 and character to assume the highest responsibilities of
24 command, citizenship, and government."

25 Q. Does this accurately reflect the Naval Academy's mission?

1 A. It is the Naval Academy's mission, yes.

2 Q. Why are parts of this mission highlighted and underlined
3 in red?

4 A. Because we want to emphasize to the people that we're
5 bringing on the admissions board each year that that's -- not
6 only that's what our mission is as a school, but it's also the
7 fact that there are things that they need to consider when
8 they're evaluating each candidate. And probably the most
9 important thing on there is the moral development.

10 It's pretty hard to put a number on moral development.
11 It's a very subjective term and often comes from a subjective
12 evaluation of the candidate which cannot be evaluated by class
13 rank or an SAT score.

14 Q. I'd like to turn to the next slide, page 3.

15 And what information is being reflected on this page, Dean
16 Latta?

17 A. Yeah. This is some legal and policy requirements. I'll
18 note that Title X actually changed at the top from 6958 to
19 8458. It was a typo error here. But it essentially says that,
20 legally, you have to be at least 17 years old but not have hit
21 your 23rd birthday by the date of entry.

22 You have to be a U.S. citizen when you're admitted. And
23 then, by DoD policy, you can't be married or have any
24 obligation to support another individual. And we have in it,
25 again, the last thing, which, of course, is one of the most

important things we evaluate, is moral character.

Q. Can any of these requirements on this slide be waived?

A. No.

Q. Let's turn to page 4 of this PowerPoint. And, Dean, what information is being reflected on page 4 of this PowerPoint?

A. These are excerpts from a SECNAV instruction which guides our mission's -- it's -- SECNAV instruction guides the Naval Academy. This particular section and the Secretary of the Navy instruction is essentially the guidance for our admissions process on factors that the Secretary of the Navy liked us to consider in evaluating each person who's applying for admission.

Q. Let's take a look at page 5 of this PowerPoint.

Almost there.

A. I've got it in my book if you want me to...

Q. Yeah, I was just hoping, for the Court's benefit, we could get it up on the screen. We're just having a bit of a technical difficulty.

MR. GARDNER: I apologize, Your Honor.

THE COURT: It's all right.

MR. GARDNER: I promise by the end of trial, we're going to get our act together, Your Honor.

THE WITNESS: So that page --

BY MR. GARDNER:

Q. Wait, wait. We've got to get the Court to the right

1 pages. There we go. Okay.

2 Now, on page 5 of this PowerPoint it refers to OPNAVINST
3 5450.330B. What is that?

4 A. That's an instruction. So below the Secretary of the
5 Navy, we have the OPNAV staff. And this is their directive
6 from us on what their direction is to the superintendent to the
7 Naval Academy.

8 And it basically says to encourage admission of qualified
9 candidates from traditionally underrepresented populations in
10 the officer corps, including African Americans, Hispanics or
11 Latinos, Native Americans, rural Americans, and woman, sailors
12 and Marines from the enlisted ranks, those with strong
13 disciplines, as well as those from foreign countries.

14 Q. Before we move on in this PowerPoint slide, let's take a
15 look at that OPNAV instruction for a second.

16 Can we take a look at P261, please.

17 Dean Latta, do you recognize this exhibit?

18 A. I do.

19 Q. What is it?

20 A. It's the same instruction that the PowerPoint was derived
21 from.

22 Q. I want to turn to the third page of this instruction. And
23 you'll see that this instruction is signed by K.P. Burke,
24 Deputy Chief of Naval Operations. Is that correct?

25 A. I think it's R.P. Burke. It's just a signature mask,

1 though.

2 Q. Sorry. R.P. Burke.

3 Do you know whether the deputy chief of naval operations
4 position is a military position?

5 A. It is.

6 Q. I'd like to move to page 6 of this exhibit, which is
7 page 2 of the attachment. This notes that "To comply with the
8 strategic guidance in Reference A, the superintendent
9 encourages qualified candidates from populations traditionally
10 underrepresented in the Naval officer corps to apply for
11 admission to UNSA. These underrepresented populations include,
12 but are not limited to, African Americans, Hispanics and Latino
13 populations, Native Americans, rural Americans, and women in
14 general."

15 Do you see that?

16 A. I do.

17 Q. As the dean of admissions, Dean Latta, what do you
18 understand this instruction requires the Naval Academy to do?

19 A. I think it's requiring us to conduct outreach to gain
20 interest from qualified candidates from each of these groups to
21 apply to the Naval Academy to help diversify the Navy and the
22 officer corps.

23 Q. I'm going to return to that outreach issue in just a
24 little bit. But before we leave this document, I wanted to ask
25 you a question, if we could turn back one page to the first

1 page of the attachment. I believe it's page 5 of the exhibit.
2 And I'd like to take a look at Section D.

3 Section D says that -- to -- "Ensures a minimum of
4 65 percent of Navy-option midshipmen complete a technical
5 degree program before receiving a Navy commission."

6 Dean Latta, as the dean of admissions, what do you
7 understand this instruction to require the Naval Academy to do?

8 A. Well, this requirement is a graduation requirement. So,
9 of course, we produce officers to go in the Navy and Marine
10 Corps; but those who matriculate in the Navy, 65 percent of
11 them are supposed to have technical degrees, which we interpret
12 to be STEM degrees.

13 When this was implemented, we also understood that, in
14 order to do that, we also had to help look for students who had
15 a strong interest in STEM. In fact, that's actually one of the
16 other things that's outlined in the other paragraph in there.
17 So we actually use it as one of the many factors we use in our
18 holistic review.

19 Q. And that partially answers my next question.

20 A. Yes.

21 Q. To what extent does this requirement of 65 percent
22 technical degrees inform the Navy Academy in making admissions
23 decisions?

24 A. Well, we don't disqualify somebody who is interested in a
25 humanities degree, but it is an important factor in making an

1 admissions decision. And actually -- oftentimes when there's
2 two equally qualified candidates, if one has a strong interest
3 in STEM, the other one has a defined interest in a humanities
4 degree, then we will often pick the STEM major.

5 **Q.** Let me ask you a broader question, Dean Latta. Does the
6 Naval Academy have more qualified applicants than it has space
7 for?

8 **A.** Yes. In my view, we -- I think it was last year we
9 probably had about 2,200 what we would call fully qualified
10 students. So "fully qualified" means not only did you qualify
11 to our admissions board, you also passed the physical fitness
12 test, you have a medical qualification, and you have a
13 nomination from an official source.

14 **Q.** So you said there was approximately 2,200 qualified
15 applicants. How much space does the Naval Academy have to
16 fill?

17 **A.** Well, the size of the classes varies each year. But the
18 last few years, it's generally been somewhere around 1,170,
19 1,180. Of course, not everybody accepts an offer of
20 appointment. So to achieve an incoming class, about 1,180
21 students, for example, we would normally have to give out
22 probably about 1,380 to 1,400 offers of appointment.

23 Again, the 2,200 means that we probably had about 800
24 people that were fully qualified.

25 **Q.** Let's go back to the training slide deck, which is DX79,

1 and let's go to page 7. It's entitled "The Candidate Cycle."

2 Can you please describe to the Court what information is
3 being conveyed on this slide.

4 A. So this is a slide that we show the admissions board but
5 we also show to candidates in here. What it really highlights
6 is our admissions cycle, in our view, actually really starts
7 not in September of the senior year; it starts in January of
8 the junior year because that's when we want students to start
9 taking college entrance exams, particularly in the junior year,
10 at least to get one or two into practice.

11 It's also because we run an outreach program called summer
12 seminar for rising seniors in June, and that application opens
13 in the beginning of January. And the students who actually
14 apply to that program, we consider that to be their preliminary
15 application for admission.

16 And then the rest of the slide talks about how the cycle
17 works. And I can walk you through that if you care.

18 Q. Yes, please.

19 A. So the summer seminar application stays open usually from
20 the beginning of January till the middle of April, when it
21 closes. And as soon as that closes, the regular preliminary
22 application opens for the following year.

23 Before they leave school in May -- I mentioned about the
24 ones that are designated as candidates. We've sent them the
25 information to start work on their application file, that

1 student portal. That's usually done at the end of May.

2 And the general idea is that, over the summertime, the
3 candidates would start working on their application files,
4 seeking out a nomination, starting to get their medicals and
5 all that stuff done.

6 But as you can see, in the end of August, the beginning of
7 September, we start training the admissions board. And then
8 each Thursday throughout the year, and sometimes Tuesdays, the
9 admissions board meets to evaluate all of the applications that
10 are completed at that point.

11 They have until the end of January to finish their
12 application. Not surprisingly, that's the same deadline that
13 members of Congress and other sources are required to have all
14 their nominations turned in to us.

15 Then as the nominations come in and the admissions board
16 does its work, then offers of appointment are tendered. Excuse
17 me.

18 **Q.** Take your time. Have some water.

19 **MR. GARDNER:** Your Honor, I know this is a little dry.
20 I'm trying to move as quickly as I can. This is a very
21 complicated admissions process.

22 **THE COURT:** Take your time. No rush.

23 **THE WITNESS:** So we are a member of NACAC, which is
24 National Association of College Admissions Counselors. And the
25 guideline in NACAC is to notify students of their status by the

1 15th of April. We actually try to notify them by the beginning
2 of April so we're not bumped up against the deadline.

3 But that status on the 15th of April could include that
4 they've been accepted, they've been declined an offer, they've
5 been accepted to prep school, they've been placed on a wait
6 list, and what have you.

7 And then they have until the 1st of May to notify us. And
8 then the next class comes in at the end of June, beginning of
9 July.

10 Q. Just a few quick follow-up questions about this slide,
11 Dean Latta.

12 I think you indicated, and this slide indicates, that the
13 first admissions board meets in September. Is that correct?

14 A. That's correct.

15 Q. But congressional nominations are not due until
16 January 31st; is that right?

17 A. Yes.

18 Q. So what is the admissions board doing, then, between
19 September and January 31st if it doesn't have congressional
20 nominations yet?

21 A. Well, they're reviewing all the qualifications of the
22 students that have submitted their applications, and they're
23 trying to determine who's qualified and who isn't. They're
24 trying to build that caseload up so that, when the nominations
25 start coming in -- normally, they'd come in starting in about

1 the middle to end of November and what have you.

2 And then part of the qualification is we have some
3 students that are really talented that we know because of past
4 performance that we're going to admit them. That admissions
5 board can also recommend they be given -- we call that early
6 notify, but they can recommend they get a letter of assurance.

7 That allows us to compete with other top schools, which
8 includes our service academy counterparts, many of the elite
9 schools or, I would say, high-tech schools like MIT and what
10 have you. But getting them a letter of assurance will hold a
11 spot in the class pending their nomination or some other
12 requirement to get in.

13 So we are actually doing some offers in the fall.
14 Obviously, if they have a service connected nom at that point
15 and they have a high multiple -- for example, the board has
16 recommended that they get a letter of assurance -- then an
17 offer can be tendered there and what have you. But most of the
18 offers are made between about the middle of January and the
19 middle of March.

20 **Q.** Does the Naval Academy view MIT as a competitor?

21 **A.** Certainly, because we have many students that are applying
22 to that school because of the same type of curriculum that we
23 have.

24 **Q.** What would happen if the admissions board waited until all
25 nominations were in before making qualification determinations?

1 A. We would never get to the finish line. As it is, many
2 members don't submit their noms until the middle to end of
3 January. And then we also have students -- again, students, we
4 encourage them to turn in their applications early so that we
5 can look at them and be ready to go, but many of the students
6 don't turn in everything until middle to late January because
7 of the deadline.

8 So it creates a massive bow wave -- or I'm sorry --
9 backflow of getting not only records to the board but also
10 getting admissions decisions done. So even though we make a
11 lot of decisions in the fall, a vast majority happen, like I
12 said, between January and the middle of March. Sometimes that
13 takes going back to congressional lists two or three times
14 because the records haven't been evaluated by the admissions
15 board yet. And we don't make a decision until we feel
16 comfortable everybody who has completed their application has
17 been evaluated by the board.

18 Q. Let's move to PowerPoint Slide 9 of the training
19 materials. And this slide mentions under one of the bullets,
20 POC admissions counselor and BGO.

21 Do you see that?

22 A. Yes.

23 Q. What does that refer to?

24 A. So every student has a counselor in our office. Our
25 counselors are divided up in the covered states, and they're

1 divided -- well, we have five regions, but each region contains
2 several states. And we have normally a lieutenant or a
3 civilian regional director who is responsible for the students
4 in their assigned areas.

5 But every student has a blue and gold officer, with a
6 couple of exceptions, that is kind of our eyes and ears in the
7 local community that not only mentor the students through the
8 admissions process, but they also provide an evaluation on
9 them.

10 Q. You said there were a few exceptions to the blue and gold
11 officer interviews. What are those exceptions?

12 A. Those are for two sports -- varsity football and varsity
13 basketball -- because there's concerns with NCAA rules
14 concerning boosters, and that in some places that might be
15 misconstrued; so we don't do interviews for them.

16 But our fleet applicants do not get a blue and gold
17 officer interview because they are required to get a
18 recommendation of their commanding officer.

19 Q. And just for the benefit of the transcript and the Court,
20 when you refer to "the fleet," what are you referring to?

21 A. We're referring to enlisted sailors and Marines applying
22 for admission.

23 Q. Now, what sort of information does the Naval Academy
24 typically receive from the blue and gold officer interviews?

25 A. It's pretty comprehensive. Obviously, they'll give us an

1 overall recommendation on how they view the candidate. They
2 also discuss with them majors, career options, whether they're
3 interested in going to prep school. They also look at their
4 leadership potential, their organizational skills, time
5 management, communication skills, and other background
6 information as well. So they give us a breadth of data based
7 on their observation of the candidate.

8 Q. And is the information that you receive from the blue and
9 gold officers important in making -- in considering an
10 applicant?

11 A. Absolutely. And, again, we get valuable information from
12 the school officials. But blue and gold officers have been
13 trained by our staff. Many of them are Naval Academy graduates
14 or have been in the military themselves. But we also have
15 parents and other advocates in local communities who want to
16 help look for great students and what have you.

17 But they have been trained by us on the things that we're
18 looking for in our admissions process and will provide a lot of
19 context in there. And oftentimes they'll tell us, for example,
20 some of the life experiences that we talked about earlier about
21 hardship, single-parent home, language skills that we may not
22 hear anywhere else in the file, so to speak, as well as their
23 own personal observation where they see the person fitting into
24 our system.

25 Q. Can the information received from blue and gold officer

1 interviews be considered as a RAB adjustment?

2 A. In some cases if they're given what we call a top five
3 evaluation. But most often the BGO interview is most valuable
4 because of the information it provides, and it's very much a
5 subjective part of our evaluation.

6 Q. So does that mean that the Naval Academy consider the blue
7 and gold officer interview outside of the RAB adjustments?

8 A. Absolutely. And oftentimes, again, when the board member
9 preps their record, they have a panel they can fill out that
10 has all the things they looked at in the record and what they
11 thought was important. And it's quite common to see them write
12 in information on the BGO interview in there. And, again, when
13 we look at the slate review, we will look at the BGO interviews
14 as well.

15 Q. Let's turn to PowerPoint Slide 11 of Defense Exhibit 79.
16 Can you explain what is being conveyed on this slide.

17 A. So this is -- again, this slide is also used in the brief
18 we give to candidates, but it really highlights the fact that
19 getting in the Naval Academy is not like applying to other
20 schools -- University of Maryland, in our case, MIT
21 or Harvard -- who just has an admissions board or admissions
22 committee that looks at their record or a series of people that
23 read the records and grade them. We have an admissions board
24 that has to do the whole-person evaluation of them, but they
25 also have to meet other requirements that often eliminate many

1 candidates from consideration.

2 That includes the medical qualification. The physical
3 fitness qualification we talked about is the CFA. That's all
4 on the left side because that all basically works through our
5 office or at the Naval Academy in DoDMERB.

6 On the other side, they have to get a nomination from an
7 official source, and that's a separate process unto itself that
8 is driven by that particular source.

9 Q. The bottom right-hand slide says, "Apply to all nomination
10 sources."

11 What is that intending to convey?

12 A. So that is our advice to every student, that they should
13 look for every single source that they're eligible for to be
14 considered for admission. They may not -- and I've actually
15 seen this happen, is that we look -- if they have more than one
16 nomination, we will actually look at their name on different
17 lists that are submitted. Most of the time, that's their
18 congressman, their two senators, and the vice president.

19 For those that have a military or service connection, we
20 may see a presidential nom or what we call a Junior ROTC nom if
21 they have a Junior ROTC unit in their school and what have you.
22 But applying to all the sources allows us to look at them on
23 several different lists.

24 Q. Let's turn to PowerPoint Slide 13. And this slide -- all
25 right. Now, this slide is entitled "General Board Process" and

1 looks a little complicated to me. So I was hoping you could
2 walk the Court through how this process works based on this
3 slide.

4 A. Okay. So this is a pretty simple presentation of our
5 process, but I'll try to explain it for everybody.

6 So, obviously, we talked about them getting access to the
7 candidate portal to work on their application, and that ties
8 into the first block, which is the record receipt.

9 In other words, when all the application components start
10 being received, the whole time through, they're being monitored
11 by our staff. Both their admissions counselor and the person
12 who processes their application, whom we call an examiner,
13 looks for that information.

14 But assuming they turned all the documents in that needed
15 to be considered by our admissions board, then our examiner
16 gets the first look at it and does a pretty thorough review to
17 make sure not only they have the correct documents in, they're
18 submitted by the right people. They look for character issues
19 in there as well and other factors that they need.

20 But their main job is to focus on whether the right things
21 are in the application. And the examiner oftentimes will go
22 back to a school official or somebody in the community to say
23 I'm missing something or you submitted the wrong teacher
24 recommendation, that type of thing.

25 When they're done, then it goes to their counselor, who

1 more or less does a review of the record. And that review can
2 include a detailed look for anything that stands out in the
3 record. We often call them triggers. Triggers can be
4 something like grade trends that may be good or bad. It can be
5 honors and AP courses; it can be unusual life experiences; it
6 can be character issues. There's a whole breadth of things in
7 there.

8 They will take a preliminary look at the application.
9 And, in many cases, they can provide a recommendation to the
10 member of the admissions board that gets -- that eventually
11 will get the record when they're done with it.

12 They do have a panel that they fill out with all the
13 things they observe in the record for the admissions board
14 member to review.

15 Now, there's a dotted line on there because sometimes the
16 admissions counselor will find something that is either missing
17 or they need to get clarified. So they may send it back to the
18 examiner for an additional look and what have you. So, for
19 example, if they have an incomplete transcript in there, that
20 would be an easy thing and what have you.

21 But let's say there's unusual life experience that the BGO
22 has highlighted. They may want to go back to the BGO and ask
23 them to explain it in a little more detail. But assuming
24 everything is in order, they will forward their file up to the
25 admissions board member. And, again, the records are

1 distributed in a random manner by our computer. Again, these
2 are all being passed electronically from one person to another
3 and what have you.

4 And so the admissions board member will review the file
5 with all the training we've given. And, again, they'll look
6 for the overall qualities in the record. They'll look at all
7 the objective factors. They'll look at the things that have
8 been recommended by the regional counselors and what have you.
9 And then they will prepare the record to brief the rest of the
10 admissions board.

11 And, again, they have several places on that file they can
12 write their comments, but they will provide an overall summary,
13 all the things they see in the record, and then put their
14 recommendation to the board, including any adjustments to the
15 score and/or any other thing that the board ought to talk
16 about.

17 And sometimes we get board members that are not sure what
18 to recommend. So they'll actually write down in there and say,
19 Hey, is this a real-life experience? Or is this person fluent
20 in a particular language? And what have you. So, again, if
21 there's an issue, they can kick it back for more information
22 and what have you.

23 But what happens when the admissions board meets each
24 Thursday is that member briefs all the records that they have
25 prepared for the week. And the way our board works, it's not

1 just them looking at it; everybody is looking at the record.
2 So the person who's briefing the record to the board, we
3 consider to be the advocate for that person as best they can
4 even if there's, you know, some bad grades and stuff in there,
5 but they're going to try to do the best they can with each
6 person in doing the holistic review.

7 And while they're briefing, everybody on the board can not
8 only look at what their recommendations are, they can open up
9 every part of that admissions file while they're being briefed.
10 And sometimes they will actually highlight the things that the
11 briefer has missed or they may want to agree or disagree with
12 what they've recommended.

13 And then our process, after the briefing, involves
14 discussing all the things that the board members see in there.
15 So if somebody disagrees -- even if they just disagree with the
16 adjustment in the record -- they can highlight that to the
17 board chairman, and that'll cause a discussion at the
18 admissions board.

19 But the idea is, with 21 or 22 people in there, you're not
20 just getting one person's view of a person; we'll get 22 people
21 looking at it. Sometimes it actually slows our process down
22 because, instead of taking two or three minutes to brief a
23 record, it can take 10 or 15 or what have you. But it adds for
24 a very thorough and competent way of looking at it.

25 The board also -- I should mention is, if they don't like

1 something or want to see additional information, they can
2 actually defer the record and send it back. You know, for
3 example, if they haven't had precalc in a senior year, they may
4 want to see their first-semester transcript to see how they're
5 doing if there's other reasons to do it.

6 But at the end of the day, the board does look at the
7 record. They try to come to a conclusion on what the
8 qualification is. They try to come to a conclusion on what the
9 recommendations are. They will annotate that information in
10 the record.

11 And then it actually goes into what we call a -- the pink
12 thing is the board actually recording -- again, it's recorded,
13 but it goes into an electronic file. And then as nominations
14 come in, it gets matched on each nominations list the person
15 has been submitted. Excuse me.

16 Q. Thank you. Get some water. And then I'm going to ask you
17 another question -- a couple more questions.

18 A. Okay.

19 Q. Just to be clear, Dean Latta, that pink box in DX79017, is
20 that the last step in the admissions process?

21 A. No. It's not -- not at all. All that means is that the
22 board action is recorded and the file is waiting to be looked
23 at on the nomination lists when they're submitted and what have
24 you.

25 And, again, it also may mean -- you know, at some point we

1 may get new information, and we may actually bring the record
2 back to the board. And there's been many cases where we've
3 brought records back to the board for a lot of different
4 reasons.

5 Q. I'd like to go to PowerPoint Slide 15 now.

6 And this slide poses the question, "What does the
7 admissions board do?" And it appears to answer that question
8 by stating that it determines qualification for admission and
9 assigns a score to each candidate. Is that right?

10 A. That's correct.

11 Q. Before we go any further, Dean Latta, is the admissions
12 board making any decision to admit a candidate?

13 A. No, they're not -- they're not actually admitting a
14 candidate. Now, they may recommend somebody who is early
15 notify, which may lead to a letter of assurance. I think
16 they're astutely aware that, if they see that a person is a
17 principal nominee on their record, that their qualification
18 would lead to an offer of an appointment. But they're not
19 actually making a decision to admit anybody.

20 Q. So who's making the decision concerning admissions?

21 A. That falls to the slate review committee to -- when we
22 look at the different lists.

23 Q. Now, on this Slide 15, there's two subbullets under
24 "Determine Qualification for Admissions." And the first is
25 "Whole-person qualification gives the opportunity to compete

1 for an appointment."

2 A. Correct.

3 Q. What is being referred to here?

4 A. In other words, if the board determines they're qualified
5 for admission, that means they continue to be considered for
6 admission. If they're not qualified, obviously, then they
7 won't be considered for admission.

8 Now, they can also, in that not qualification, can also
9 recommend them for a preparatory program; so there's another
10 possibility in there and what have you.

11 Q. Does the Naval Academy admit any student who is not
12 qualified?

13 A. No, we don't.

14 Q. Does the Naval Academy admit any minority student who is
15 not qualified?

16 A. No, we don't.

17 Q. In making admissions decisions, does the admissions board
18 base qualification decisions on race or ethnicity?

19 A. No, they do not.

20 Q. The second bullet states, "Include consideration for prep
21 school programs and no separate application."

22 What is that referring to?

23 A. That's just to highlight that -- a very simple term would
24 be the board does all the -- makes all the recommendations for
25 each candidate. So there's not a separate application, apply

1 to prep school; it's all done at the admissions board.

2 Q. And we're going to come back to prep schools in a few
3 minutes. We've heard a little about it --

4 A. Yes.

5 Q. -- but we'll flesh that out.

6 The last bullet states, "Assigns a score to each
7 candidate."

8 Dean Latta, can you explain how the scoring works.

9 A. Well, so the score is the whole-person multiple, and there
10 are several components to the whole-person multiple. Those
11 include their class rank, their SAT scores. Each of the math
12 and English teacher recommendations have questions the teacher
13 has answered and, based on how they answered that, feeds into
14 the whole-person multiple; all the candidate activities that
15 the student has indicated, which includes awards, leadership,
16 that type of thing. And those can be athletic and nonathletic
17 and what have you. The candidate academic information form we
18 talked about is a component of all that.

19 So the score -- so the whole-person multiple includes
20 those types of things. And those types of things are fairly
21 straightforward. We sometimes call those objective factors.
22 But the score can include manual adjustments based on some
23 preset adjustments that the board can make because they're,
24 what we'd say, very mechanistic. You have a certain number of
25 AP classes, then you automatically get these points. The board

1 will assign that to them. That would be a good example.

2 But there's also a lot of subjective things that the board
3 looks at. And those subjective things often leads to an
4 adjustment in the score. And they can recommend adjustments
5 that are both positive and negative. So the whole-person
6 multiple score that we end up on each candidate includes a lot
7 of those -- a combination of all those things and what have you
8 in there.

9 Q. So why don't we do a bit of a deeper dive on the
10 whole-person multiple. And to do that, why don't we turn to
11 the next slide.

12 A. Okay.

13 Q. That's Slide 17. Now, it starts off by saying,
14 "Whole-person multiple objective factors."

15 And you used the word just a minute ago about "objective
16 factors." What did you mean by "objective"?

17 A. Objective means that there are set values based -- you
18 know, you're ranked 10 out of 100 in a class. We have an
19 algorithm that has a computer-generated score that accounts for
20 that 10th in the class. There are things that are preset in
21 the computer that the board does not adjust for.

22 Now, if there's additional information -- for example, if
23 there's additional athletic information that's not captured in
24 what's provided, the board, obviously, can adjust for that as
25 well. But these are things that normally come in because

1 they're part of the application that's submitted by the
2 student, and the computer automatically picks up on them when
3 those forms are submitted.

4 Q. Now, just so we have a complete record in this case that's
5 accurate, at the very bottom here, this slide says, "Does not
6 include standardized test scores."

7 A. Right.

8 Q. Is that true today?

9 A. No. So it's -- starting with the class of 2028, there was
10 a change in the National Defense Authorization Act to require
11 the service academies to use standardized test scores as part
12 of the whole-person multiple -- as part of the scoring system.
13 Sorry.

14 Q. No, that's fine.

15 In the past, why didn't the Naval Academy include
16 standardized tests in the whole-person multiple?

17 A. So during -- when we went into COVID in the 2020 time
18 frame, a lot of students across the country, regardless of
19 background, lost access to standardized test scores. And the
20 reality was very evident that, in order to assess students, we
21 were going to have to waive -- I won't say waive, but we were
22 going to have to go with a system that did not absolutely
23 require the submission of test scores.

24 So we, along with our service academy counterparts, went
25 to kind of a flexible system where we highly encouraged them to

1 take the standardized tests as best they could but, if they
2 didn't have access to the tests, that we evaluated their
3 application files without the use of standardized tests and
4 what have you.

5 But during the period that was not part of the weighted
6 part of the whole-person multiple, we still used them as an
7 evaluation tool for every candidate that was applying for
8 admission if they provided them.

9 Q. And how long did the Naval Academy use a test-flexible
10 policy?

11 A. So it started with the class of '25, and I think the last
12 class was 2027.

13 MR. GARDNER: Your Honor, I am more than happy to keep
14 going, but if you'd prefer to take a break now, we can do that
15 too. Whatever you wish.

16 THE COURT: Let's go about another 10 minutes or so.

17 MR. GARDNER: Absolutely, Your Honor.

18 BY MR. GARDNER:

19 Q. Can the admissions board make adjustments to the initial
20 whole-person multiple score?

21 A. No, not really. I would say the only thing they can
22 adjust -- they can -- if they -- the one thing they can do, for
23 example, is if the teacher -- if the written words by the
24 teachers are inconsistent with how they've evaluated them, they
25 can recommend an adjustment for that. But essentially the

1 score that they get is on their file.

2 Q. So once they have that whole-person multiple score, can
3 the admissions board then adjust that score through the RABs,
4 or recommendations of the admissions board?

5 A. Absolutely. And that's one of the big things they do when
6 they review each file.

7 Q. And then can you just explain in general terms how the
8 board goes about making those adjustments using those RABs?

9 A. Right. So they have -- they have some guidelines we've
10 given them that are included in their admissions binder. And
11 those adjustments -- again, there are other objective factors
12 that they can adjust the score for manually. That includes,
13 like I said, the AP courses if they're in an IB program, if
14 they're gone to a competitive entry school. Those are
15 basically standardized things.

16 But the harder part is, for example, evaluating hardship,
17 unusual life experiences, subjective words written by the
18 teachers, maybe financial difficulties, socioeconomic status,
19 for example, are very subjective evaluations and what have you.

20 They also can adjust -- for example, when they evaluate
21 the student, the other factors that we've talked on the
22 board -- like first-generation American, English as a second
23 language, first-generation college -- those all -- we have a
24 standardized score they can put in there, but it takes an
25 evaluation by the admissions board to make that determination

1 for each of those things.

2 Q. All of those subjective factors that you just described,
3 are you saying that those can be the basis for making RAB
4 adjustments?

5 A. Yes.

6 Q. Can those same subjective factors be used by the
7 admissions board outside of making RAB adjustments?

8 A. Right. There are a lot of cases where the board will
9 highlight and they'll spend a lot of time talking about, for
10 example, an unusual life experience. They may not have made an
11 adjustment for it, but they may have made a recommendation
12 based on it or helped inform a recommendation based on those
13 type of things and what have you.

14 Q. Could you give the Court an example of how the admissions
15 board would consider those kind of subjective factors in
16 considering an applicant outside of the RABs?

17 A. Well, character issues are one of them. That would be an
18 excellent example. We have a lot of students that we find out
19 character issues. And very simple thing: It's very common to
20 see students in high school nowadays that have been caught by
21 their teacher plagiarizing, particularly in a humanities class
22 like English and what have you, and the board will look at
23 that.

24 In some cases, if it's extremely egregious and it is --
25 and it's near -- you know, and it's their senior year or junior

1 year when they should supposedly be a little more mature, they
2 might do something about it. But oftentimes they'll evaluate
3 it and they'll say, well, this happened in 9th grade; it's not
4 that bad; they learned from it; they've become a better person.
5 So we may note that in there, but we may not do any adjustment
6 to their score and what have you.

7 The same thing can happen for life experiences.
8 Oftentimes we get students that have had to change their
9 routine because a parent has been sick or they're taking care
10 of a sibling. The board will note it. Don't always make a
11 change to the score.

12 We've had a lot of natural disasters in the U.S. over the
13 last few years that include students that have had to move out
14 of their houses because of hurricane damage or fires,
15 earthquakes, tornadoes. And those often get noted by the
16 board. The board will try to assess what's been the impact on
17 their life and their ability to mature and handle the stresses
18 that they've had.

19 But it may vary widely on how that adjustment applied, if
20 any at all. In fact, sometimes they don't make any adjustment
21 at all even though they'll think it's important.

22 Q. And just for the Court's benefit, how common is it to
23 consider those kind of subjective factors outside of the RABs?

24 A. It's quite common.

25 Q. Let's go to Slide 19.

1 **THE COURT:** Why don't we take a break here now. We'll
2 take a 10-minute break, and then we'll go until 5:00 today.
3 We'll take a 10-minute break.

4 **THE CLERK:** All rise. This Honorable Court is now in
5 recess.

6 (A recess was taken from 3:35 p.m. to 3:51 p.m.)

7 **THE COURT:** You may continue, Mr. Gardner.

8 **MR. GARDNER:** Thank you, Your Honor.

9 **BY MR. GARDNER:**

10 **Q.** Dean Latta, I wanted to turn your attention to Slide 19.
11 It's entitled "Academics." And I promise I'm not going to
12 torture anyone with going through this slide in toto. But I do
13 have a question for you.

14 It talks at the very bottom about percentage of HS
15 graduates -- I assume that's high school -- going to four-year
16 colleges.

17 Do you see that?

18 **A.** Yes.

19 **Q.** And I think we talked earlier about the Naval Academy's
20 consideration of matriculation rates from high school.

21 Do you recall that?

22 **A.** Yes.

23 **Q.** One thing I didn't ask you, though, is may RAB points be
24 assigned to applicants who attend high schools with a high
25 percentage of graduates who attend four-year colleges?

1 A. Yes.

2 Q. Now, Dean Latta, plaintiff's experts criticized Naval
3 Academy for providing RAB points for applicants who attend high
4 schools with high four-year college attendance rates because he
5 claims it disadvantages minority applicants who may not have
6 gone to good high schools; therefore, the Navy should not
7 consider this in making RAB adjustments.

8 What's your reaction to that criticism?

9 A. Well, first off, part of the reason that they get credit
10 for college graduates is because, first and foremost, they're
11 often -- it's affected in their class rank in a negative way if
12 they're in a school that a high percentage are going to
13 college. So, in a sense, there's an offset there.

14 The other thing is that, if they're -- a high percentage
15 is going to college, it actually helps -- if you look at the
16 curriculum of the schools, it's often a more rigorous
17 curriculum, which makes them better prepared to start our
18 school; so it actually helps many candidates.

19 But, on the other side, I've just found that students who
20 do not have access to four-year college, to the high percentage
21 of schools, find ways to get to a rigorous curriculum that we
22 can honestly evaluate them. And they actually get compensated
23 because, if they're not going to a school that a strong
24 percentage go to four-year colleges, their class rank is
25 actually usually much higher, and it does affect their multiple

1 in a positive way.

2 Q. So based on your experience working in the admissions
3 office, is a high school's college matriculation rate important
4 information to consider in the admissions process?

5 A. I'm sorry. I didn't understand that question.

6 Q. Based on your experience working in the admissions office,
7 is a high school's college matriculation rate important
8 information in the admissions process?

9 A. Yes, it is.

10 THE COURT: I'm not sure if I understand that line of
11 inquiry.

12 MR. GARDNER: Absolutely.

13 THE COURT: You have to explain it to me. I don't
14 understand what that means. The point is that, apparently,
15 Dean Latta, that means that, if one goes to a high school -- a
16 highly ranked public school --

17 THE WITNESS: Correct.

18 THE COURT: -- with a huge percentage of students who
19 go to a four-year university --

20 THE WITNESS: Correct.

21 THE COURT: -- then that applicant does or does not
22 get RAB points?

23 THE WITNESS: The computer will assign RABs to them --

24 THE COURT: Will award that applicant RAB points,
25 right?

1 **THE WITNESS:** Correct.

2 **THE COURT:** Now, what about a student who attends a
3 high school in an impoverished area where there's hardly anyone
4 that goes to high school or there's a high dropout rate and
5 that person may have gotten good grades but, obviously,
6 apparently academic competition wasn't that stiff? Do they get
7 RAB points?

8 **THE WITNESS:** Right. Essentially, it's the exact
9 opposite. Their class rank or their GPA will be much higher;
10 so that actually will give them a higher input to the --

11 **THE COURT:** Well, it may -- my question -- that's why
12 we asked the question. It may or may not. My point is do they
13 get RAB points in consideration because of the lack of people
14 who go to college, or do they have to show that by their class
15 rank?

16 **THE WITNESS:** It's in the class rank.

17 **THE COURT:** It's in the class rank. So there's a
18 presumption that they would do better because there's less
19 competition?

20 **THE WITNESS:** That's usually the case.

21 The other issue with some of the impoverished areas is a
22 lot of -- and I've been to a lot of these schools. Most of the
23 schools that the kids are applying out of where they have low
24 matriculation rates, the schools still have AP and honors
25 courses in there or they'll go get dual credit at the community

1 college. And we actually credit -- so we will actually add
2 points to their score if they're doing dual credit at a
3 community college or taking a rigorous online course, for
4 example.

5 So there's other ways that we compensate them if they're
6 not going to a four-year -- you know, a school that has a high
7 matriculation rate to a four-year school.

8 **THE COURT:** It would seem to me that that very
9 structure, in a commonsensical way, would work against racial
10 diversity in many ways, does it not?

11 **THE WITNESS:** I haven't found that to be the case. In
12 a lot of these, even though the -- many of these schools don't
13 have a large, diverse population. I mean, they do have
14 minority students in there that do benefit from that the same
15 thing as other students would.

16 **THE COURT:** Okay. Thank you. Thank you very much.

17 **THE WITNESS:** Can I add one other thing, Your Honor?

18 **THE COURT:** I'm sorry?

19 **THE WITNESS:** There's one other point to be made.
20 Many of the impoverished areas are in congressional districts
21 where we have weak representation. So they're competing for
22 appointments in the same district with school -- kids who are
23 going to similar schools as them.

24 **THE COURT:** These are the underrepresented districts?

25 **THE WITNESS:** That's correct.

1 **THE COURT:** Congressional districts?

2 **THE WITNESS:** Correct.

3 **THE COURT:** Okay. Thank you very much.

4 **BY MR. GARDNER:**

5 **Q.** All right. Why don't we go on to the next slide,
6 Slide 20. And this slide is entitled "Subjective Evaluations."

7 And previously, Dean Latta, you explained to us what the
8 objective evaluation was. What is the subjective evaluation?

9 **A.** So the subjective evaluations take the form of written
10 inputs. And the people listed on here are the primary authors
11 of these things. And, again, we've talked about the personal
12 statement, the counselor's evaluation, teachers, blue and gold
13 officers.

14 We also have many students that are in what we call Junior
15 ROTC or ROTC programs. So if they're in a military type of
16 program, then we often will get a letter of recommendation, in
17 particular if they're applying for one of the nominations.

18 If they've been to our summer program, we get written
19 write-ups from the midshipmen, and then they have an
20 opportunity to provide letters of recommendation from other
21 people.

22 And we always encourage them to find somebody that they
23 know well. And if they've been working -- for example, if
24 they've been working full-time or part-time or they're in a
25 major activity like coaching where they have a coach and what

1 have you that knows them for a while, then we often will get
2 very strong recommendations. And those often include a lot of
3 other things that can't be captured, like leadership potential,
4 ability to work with others on a team, motivation, work ethic,
5 and that type of thing.

6 Q. Now, Dean Latta, beyond this slide deck, is the admissions
7 board given any additional guidance on how to adjust the
8 whole-person multiple score?

9 A. No. We leave it up to the board to evaluate all of these
10 things.

11 Q. Is there guidance on the RAB adjustments?

12 A. There can be. For example, for a personal statement,
13 we'll often say, you know, 500 points or so. Summer seminar
14 has a structure for if they have a high ranking at summer
15 seminar.

16 But the other ones in there -- and, again, blue and gold
17 officers, if they get the top ranking from the blue and gold
18 officer, get a top 5, the board is also told that they can
19 adjust -- provide point adjustments for that.

20 And, again, teachers' evaluations. Sometimes the teachers
21 will undervalue their contributions; so they can get additional
22 points there.

23 So there are some written words in our RAB guidance form,
24 but we also give the board wide flexibility to adjust the score
25 as they see fit.

1 Q. So there is a form that describes how to use the RABs?

2 A. A little bit. But, again, sometimes they'll highlight --
3 particularly teacher evaluations will highlight qualities in
4 the application file, but they don't necessarily provide
5 additional points for that.

6 For example, teachers may say the person is the leader in
7 school and everybody knows it, same thing with the counselors.
8 The board may or may not provide a RAB adjustment for it but
9 think that's an important quality when we're evaluating their
10 leadership potential.

11 Q. Tell you what. Why don't we take a look at an exhibit.
12 DX1.

13 MR. GARDNER: Now, Your Honor, for DX1, we are not
14 going to put that one on the screen. There's only two exhibits
15 here that fall into that category, and this one just because it
16 has some sensitive information in it. And I believe I have a
17 copy.

18 I apologize, Your Honor. May I approach?

19 THE COURT: Yeah, sure. Thank you.

20 BY MR. GARDNER:

21 Q. Dean Latta, do you recognize Defendants' Exhibit 1? It
22 should be in your binder. Is it not in your binder?

23 A. I must be looking in the wrong spot.

24 Q. I may be failing life today.

25 MR. GARDNER: May I approach the witness, Your Honor?

1 **THE COURT:** Sure.

2 **THE WITNESS:** Okay. Sorry.

3 **BY MR. GARDNER:**

4 **Q.** Dean Latta, do you recognize what has been marked as
5 Defendants' Exhibit 1?

6 **A.** Yes.

7 **Q.** What is it?

8 **A.** This is a document that we put in the admissions board
9 binder that provides some guidance to our board members on how
10 to use what we would call RABs or the points that they would
11 award to candidates.

12 **Q.** Now, the first paragraph of this guidance document states
13 that "Although each admissions board member must use their good
14 judgment when evaluating candidate records, the board must
15 strive for consistent application of RABs throughout the entire
16 class. The following RAB guidance should be used to provide
17 consistency to the process of evaluating and voting on
18 records."

19 Do you see that?

20 **A.** Yes.

21 **Q.** Dean Latta, given your experience in the admissions
22 office, does the admissions board tend to apply RAB adjustments
23 consistently?

24 **A.** On some things they do, but it can vary widely. And often
25 it varies widely when you start talking about hardship or

1 unique life experiences and what have you.

2 But there's some conditions that we routinely look at and
3 the board has some consistency in how they -- but, for example,
4 the student that has lived -- again, we had a kid that lived in
5 Pakistan for about 15 years and was homeschooled and spoke five
6 different languages and what have you. That would be the
7 example of one.

8 There might be a wide variance in how the board might have
9 not been very consistent in applying the RABs compared to
10 somebody else who might have, you know, just lived in Kansas,
11 for example.

12 **Q.** Dean Latta, in light of those variations that you just
13 described, has the Naval Academy made any changes to the RABs
14 for this admissions cycle?

15 **A.** Well, the one thing we did do is we -- we realized that we
16 had not done a very good job with identifying socioeconomic
17 status; so we've tried to separate that out so that it doesn't
18 get conflicted with unusual life experiences or hardship. That
19 would be the one thing that we've done this particular year.

20 **Q.** So do you now have a separate RAB for this admissions
21 cycle for socioeconomic status?

22 **A.** Yes.

23 **Q.** And why did the Naval Academy create a new RAB
24 specifically for socioeconomic status for this admissions
25 cycle?

1 A. Well, I think it comes back to -- it's a -- you might call
2 it a race-neutral factor. But even in my review of our -- my
3 informal reports, I saw a lot of variance in how the board
4 applied them, and I just thought it was important to separate
5 them out.

6 Q. Now, the paragraph we just looked at referred to a quick
7 reference guide as Enclosure 1 to this guidance.

8 Do you see that?

9 A. Yes.

10 Q. Why don't we take a look at that guidance. It's DX2.

11 MR. GARDNER: Your Honor, this is the second of two
12 exhibits that we were not going to put on the screen because of
13 sensitivities. Can I approach?

14 THE COURT: Yes.

15 BY MR. GARDNER:

16 Q. Dean Latta, do you recognize what has been marked as
17 Defendants' Exhibit 2?

18 A. Yes.

19 Q. What is it?

20 A. It's the quick reference guide that is an enclosure to the
21 main document that you just discussed.

22 Q. The enclosure to DX1?

23 A. Correct.

24 THE COURT: Do I understand -- by the way, are these
25 documents, because they're being presented in this fashion on

1 the screen, that they're sealed?

2 **MR. GARDNER:** They are not sealed, Your Honor, but
3 there's sensitive information. They can go in the public
4 docket. We just wanted to reduce the amount of public
5 disclosure to the numbers in particular because Dean Latta has
6 indicated there is some sensitivity to having those numbers
7 widely disseminated. So we're trying to take some
8 precautions --

9 **THE COURT:** Well, I'm trying to verify that neither of
10 these exhibits are sealed --

11 **MR. GARDNER:** Correct.

12 **THE COURT:** -- and all of this information is a matter
13 of public record.

14 **MR. GARDNER:** Correct. We're just trying to be -- you
15 know, trying to reduce the dissemination in the courtroom to
16 the extent we can. We're not -- you know, trying to give as
17 much public information as possible without --

18 **THE COURT:** You mean, we're reducing by maybe 20 pages
19 in comparison to all the boxes we have here. So --

20 **MR. GARDNER:** I understand we're probably killing more
21 trees. I hear you.

22 **BY MR. GARDNER:**

23 **Q.** Let's take a look at Plaintiff's Exhibit 27.

24 Dean Latta, do you recognize Plaintiff's Exhibit 27?

25 **A.** Yes.

1 Q. What is it?

2 A. It's the dean of admissions supplemental guidance to the
3 admissions board for the class of 2028.

4 Q. I'd like to turn to page 2 of this exhibit.

5 And that page is entitled "Whole-person multiple and other
6 considerations."

7 Do you see that?

8 A. Yes.

9 Q. I want to focus on the bottom paragraph, paragraph 6. And
10 I want to look at the last sentence here. It says that "When
11 considering the subtler aspects of a candidate's record, the
12 board is encouraged to give reasonable weight to the
13 candidate's demonstrated leadership, character, and motivation
14 to pursue a career in the naval service through the U.S. Naval
15 Academy program."

16 Do you see that?

17 A. Yes.

18 Q. Dean Latta, since this is your guidance, what does this
19 mean? What are you trying to convey here?

20 A. I think what we're trying to convey is that it's not a
21 mechanistic process, that we want them to look at other factors
22 in the record. And particularly because leadership and
23 character and motivation are all important qualities that we're
24 looking for in Marines and naval officers after graduation, we
25 want to make sure that the board is looking at factors like

1 that.

2 **Q.** I want to now turn to the next page of Plaintiff's
3 Exhibit 27. And I'd like to focus on paragraph number 7. And
4 this paragraph here -- it's a little long, but I'm going to
5 read it.

6 It says that "It is essential that the admissions board
7 strongly consider candidates who will ensure that the brigade
8 of midshipmen, and ultimately our graduates, are representative
9 of American society and meet the needs of the naval service by
10 producing well-rounded officers to lead and mentor sailors and
11 Marines.

12 "To cultivate a set of leaders with legitimacy in the eyes
13 of the nation, it is necessary that the path to leadership in
14 the Navy be visibly open to talented and qualified individuals
15 of diverse backgrounds.

16 "The composition of the class of 2028 should be a cross
17 section of America with the greatest possible variety of
18 backgrounds. This provides an educational experience enhanced
19 by interaction amongst students with different perspectives and
20 life experiences and, in turn, raises the level of academic and
21 social discourse, sharpens critical thinking and analytical
22 skills, and prepares students to lead in diverse environments.

23 "Among the host of factors, the board shall, therefore,
24 consider acceptance of candidates from across the nation who
25 bring varied experiences."

1 Now, Dean Latta, I've got a few questions about this
2 paragraph. First, does this discussion about the value of a
3 diverse student body originate with you?

4 A. This -- this is essentially the same verbiage in the
5 superintendent's guidance.

6 Q. Okay. And what is your understanding of the purpose of
7 this paragraph?

8 A. Again, we're trying to reemphasize to the admissions board
9 what to look for. So, you know, repeating it shows how
10 important that we think it actually is.

11 Q. Okay. Let's go on this document, on this page, I'd like
12 to look at 70. And one of the experiences that's highlighted
13 for consideration is exceptional athletic ability, correct?

14 A. That's correct.

15 Q. And why is that factor of particular importance to the
16 Naval Academy?

17 THE COURT: You've obviously never been to the
18 Army-Navy game, Mr. Gardner.

19 MR. GARDNER: Your Honor, I know the answer to this
20 question. I'm just trying to build a record.

21 (Laughter.)

22 THE COURT: A little humor late in the afternoon. If
23 you've ever gone to an Army-Navy game, you'd understand that.
24 So let's just move on, for Pete's sakes.

25 MR. GARDNER: Fair enough. If you think the record is

1 sufficient, we can move on.

2 **THE COURT:** Do you have any objection to my comment in
3 that regard to the Army-Navy game?

4 (Laughter.)

5 **MR. MORTARA:** Not at all, Your Honor.

6 **BY MR. GARDNER:**

7 **Q.** Why don't we look at 7P, then. 7P says, "Enlisted members
8 of the regular Navy or Marine Corps or the Naval or Marine
9 Corps Reserve."

10 Now, earlier today, Dean Latta, you talked about the
11 fleet. Why is this factor here in 7P of particular importance
12 to the Naval Academy about members of the fleet?

13 **A.** Well, I think there's a couple of reasons. Most
14 important, in addition to students coming out of high school,
15 we think that a path to become an officer is extremely
16 important for high-performing sailors and Marines who have
17 proven themselves in the fleet.

18 Many of them have proven themselves not only in combat or
19 real-world operations, they've proven early leadership and
20 other qualities that are important to naval officers as well.
21 They bring a wealth of experience because they have been
22 enlisted service members in your student body. And they
23 actually -- if you're talking about developing somebody to
24 become a leader in the Navy or Marine Corps, what's one of the
25 best ways you can teach them to be a better leader? You have

1 them go to school with somebody who's coming from the fleet.
2 Then they can view the things that they've learned in the fleet
3 before the person ever gets to the active forces as an officer.

4 So it's really -- again, I think it's important that
5 high-performing sailors and Marines. We had several flag
6 officers, including General Allen, who was -- actually, he was
7 a Marine -- a four-star Marine general, was an enlisted sailor,
8 went through NAPS is a good example. And Admiral Waller, who
9 was our superintendent several times ago, was also enlisted and
10 went through NAPS. And we have a third -- it's a great path
11 for officer corps for those who've served.

12 Q. Dean Latta, do you happen to know the demographic
13 composition of the fleet?

14 A. Yeah. It's well over 50 percent racial and ethnic
15 minorities.

16 Q. I want to ask you a question about 7Q, as in Quincy. And
17 this talks about the underrepresented districts. And you
18 touched on this a little bit early, but I just wanted to ask a
19 few quick questions.

20 Underrepresented districts are what? Can you describe
21 that for the Court, what that means?

22 A. So there's a number of criteria for underrepresented
23 congressional districts, but generally they're congressional
24 districts where we have low interest in applying to the Naval
25 Academy and/or we get few students that finish their

1 application.

2 Even if they've applied, they have difficulty getting
3 through our admissions board qualified because oftentimes the
4 school systems are weaker in those districts.

5 They -- congressman or congresswoman may have a low number
6 of noms they're provided, and that sometimes relates to the
7 number of applicants that they have. There's a number of
8 criteria that we look at. But these are ones that we feel, on
9 our staff, they're areas that we need to get students into the
10 Naval Academy and provide them an opportunity to go to college
11 and become an officer in the Navy or Marine Corps, but we don't
12 have the visibility we need to get the students.

13 Again, Title X was written by Congress. There was an
14 expectation there, I believe, that every member of Congress
15 should have an opportunity to have their students attend a
16 service academy. It provides great geographic diversity with
17 people of different values and what have you.

18 Oddly enough, almost all of our congressional districts
19 sit in areas that have large diverse populations or are in
20 rural areas of the country where there are weak school systems
21 as well.

22 **Q.** I'm going to have a few more questions for you about
23 underrepresented districts. But before we do that, I want to
24 look at one more exhibit. Can we go to P28.

25 Dean Latta, I think you do recognize this exhibit, right?

1 A. Yes.

2 Q. I believe you looked at it earlier. What is this?

3 A. This is the superintendent's guidance to the admissions
4 board for the class of 2028.

5 Q. Let's go to the second page of this exhibit and
6 paragraph 5.

7 Now, I think just a few minutes ago you said that there
8 was language in your supplemental guidance that was taken from
9 the superintendent's guidance.

10 Does paragraph 5 reflect that guidance?

11 A. Yes.

12 Q. Okay. Do you agree with the sentiment expressed in
13 paragraph 5 of the superintendent's guidance?

14 A. Yes, I do.

15 Q. Why?

16 A. It's been my experience throughout my naval career,
17 starting when I was at the Naval Academy and I had two
18 roommates came from completely different backgrounds, and I
19 learned from them before I ever got to the fleet. But I found
20 that all the qualities that we're trying to highlight there are
21 things that we're looking for in Navy, Marine Corps officers.

22 But I was also thinking about the future and what the Navy
23 and the Marine Corps ought to be consistent of. It's a very
24 diverse officer corps. They're going into a very diverse
25 environment. So having language skills, for example,

1 understanding of other cultures, understanding of other people
2 that come from completely different backgrounds, I think, is
3 extremely important. And, of course, we're looking for
4 qualified candidates, regardless of their background, who can
5 be successful naval officers.

6 Q. Dean Latta, it has been suggested in this case by the
7 plaintiffs that, on average, minority applicants to the Naval
8 Academy have lower whole-person multiple scores than
9 nonminorities.

10 First question is, based on your experience as the dean of
11 admissions, is it factually true that, on average, minority
12 candidates have lower whole-person multiple scores than
13 majority students?

14 A. There are some that have lower scores than some of the
15 majority candidates.

16 Q. Are you concerned at all, Dean Latta, about any difference
17 in whole-person multiple scores between minority and
18 nonminority admitted students?

19 A. No, because we do a pretty thorough scrub of every
20 application file. And I'll be honest with you, our board is
21 really tough. Again, when I had professors who represented
22 different academic regimes at the Naval Academy, they're very
23 meticulous in making sure they understand the credentials of
24 the students that are applying.

25 But that's blended in with the military officers who are

1 all looking -- who understand the academic requirements and
2 they're kind of looking at other experiences, including
3 leadership and what have you. So we do, I think, a very
4 thorough job, and it shows in our graduation rates.

5 **Q.** Dean Latta, based on your more than 20 years of experience
6 in the admissions office, do you have any views or
7 understanding as to why the whole-person multiple scores from
8 minority admitted students might be lower than for nonminority
9 students?

10 **A.** Well, I think in a couple of cases, for example, with
11 African Americans, the predominant student, they -- more than
12 half of them are blue-chip athletes, particularly football,
13 where we took some academic risks in. And most of them are --
14 matriculate through NAPS. And NAPS is a program we have for
15 students who need an additional year of academic prep. And
16 typically, going into NAPS, those students always have lower
17 whole-person multiples than our direct-entry students.

18 We don't change their multiples coming out of NAPS, but
19 they come in. But also because blue-chip athletes in that
20 group dominate large team sports like track and football and,
21 to a lesser extent, basketball and what have you, we often take
22 risks because of their athletic ability. Their athletic
23 ability to get in those large team sports have a lot of great
24 qualities in what we're looking for, including leadership and
25 teamwork and perseverance. So we've taken some additional risk

1 on many of those students; so their scores often are a little
2 bit lower.

3 The other issue is just we have a very small statistical
4 group of students in that particular cohort that are admitted
5 so there's not a large population to compare them to and what
6 have you. But more than half the athletes we bring in in that
7 particular group are blue-chip athletes who have matriculated
8 through NAPS; so they're going to have a lower whole-person
9 multiple.

10 Q. Now, in considering applicants to the Academy from NAPS,
11 do you consider the applicant's whole-person multiple score?

12 A. No. It's -- our evaluation coming from NAPS to the Naval
13 Academy is done by reviewing their performance at NAPS by
14 senior leaders at the Naval Academy. And they have a number of
15 criteria that they review of their performance.

16 Q. Dean Latta, are you aware of circumstances where an
17 applicant may have a comparatively lower whole-person multiple
18 score but other strong factors in their application file?

19 A. Yes. And leadership can be one of those things.

20 Q. How common is it to see a circumstance where an applicant
21 has a comparatively lower whole-person multiple score but other
22 strong factors in their application file?

23 A. Well, it's not that uncommon. And a good example, a lot
24 of the -- I'll go back to blue-chip athletes. But we get
25 students -- and it goes beyond the athletes. We get students

1 that are engrossed in one tremendously great activity. For
2 example, gymnastics is a full-time activity, and a student in
3 there can be a great student, but their multiple is driven
4 lower by other qualities. But the reality is they developed
5 the perseverance and teamwork and other things.

6 And, again, I have other students that have leadership
7 qualities that are high, but their academics are not
8 particularly strong; so their multiple is lower for that
9 reason. But there's a lot of different reasons why the
10 multiple could be lower.

11 Q. Dean Latta, you were asked some questions by my friend
12 about changing an admissions board decision from not qualified
13 to qualified.

14 Do you recall that?

15 A. Yes.

16 Q. How often do you change a candidate's score from not
17 qualified to qualified?

18 A. It's pretty rare.

19 Q. What are the reasons you may change a candidate from not
20 qualified to qualified?

21 A. Well, most often it's done for efficiency in the
22 admissions process and usually when the board is not in session
23 and what have you. And that would be the most important reason
24 why we would do it.

25 And, for example, you know, in late March and April we

1 sometimes get new information in on students, in fact. And the
2 board's not meeting; so we're left with our slate review
3 committee to look at the file and say is this still a valid
4 recommendation or is it not?

5 Q. I believe you testified with my colleague that sometimes,
6 when changing an applicant from not qualified to qualified, you
7 don't go back to the admissions board; is that right?

8 A. That's correct.

9 Q. In what circumstances would you not go back to the
10 admissions board when making a change from not qualified to
11 qualified?

12 A. Well, one of them would be -- one of them would be exactly
13 the situation I just described where the admissions board is
14 not in session and I have to make -- I have to make an
15 admissions decision, what have you.

16 The other one might be a review of a particular file by
17 the superintendent and have he or she look at the file and --
18 and, again, they would look at the same information that the
19 admissions board would look at and what have you.

20 So those are two good examples of why we might change.

21 Q. Have you ever done the opposite, where you've changed an
22 applicant from qualified to not qualified?

23 A. Absolutely. And I can think of a couple great examples.
24 Character issues, for example -- and, again, the board rarely,
25 if ever, meets after the end of March. And sometimes we get

1 information on character issues when the board's not in
2 session, and oftentimes it's negative.

3 For example, we had a student who had a fully qualified
4 offer that he accepted a couple years ago. He was caught in
5 one of these private -- he thought was a private chat room in
6 kind of a -- I don't know if it was a sexual assault or was a
7 sexting or some other thing, but it showed bad moral character,
8 the type of student we didn't want.

9 So we not qualified the person based on the character
10 issue and not did take the record back to the board in that
11 particular case.

12 We've also had students that, after they've been qualified
13 by the board and then we get a transcript in in April or May
14 from the -- from the school and, lo and behold, they have
15 stopped working their senior year, and the grades reflect
16 somebody that we don't want.

17 So we pulled offers or not qualified somebody in those
18 cases.

19 Q. Have you ever changed an applicant from not qualified to
20 qualified where you had concerns about their academic
21 performance at the Academy?

22 A. No.

23 Q. In changing an applicant from not qualified to qualified,
24 do you consider the applicant's race or ethnicity?

25 A. No.

1 Q. Let's go back to the slide -- the training deck, DX79.
2 I'd like to look at Slide 20.

3 And I want to ask you a question about income. You had
4 mentioned earlier that there is a question on the application
5 asking for an applicant's family income.

6 Do you recall that?

7 A. I do.

8 Q. Is that income self-reported by the applicant?

9 A. Yes.

10 Q. Do you have any concerns about the accuracy of this
11 self-reported family income information?

12 A. Yes.

13 Q. Why?

14 A. Well, first off, it's self-reported, and there's been
15 numerous documented instances. And the most common or easiest
16 one to understand for all of us is that the parents -- a senior
17 officer -- either one or both of them is a senior officer, and
18 the student will put down their parents are making less than
19 20,000 a year and what have you, or both parents are attorneys,
20 doctors, or professionals, and they don't record it correctly
21 or whatever.

22 And I just come to the conclusion that some students know
23 exactly what their parents are making, but a lot of them are
24 guessing. They're not even required to tell us what the family
25 income is and what have you. So oftentimes when they put down

1 that they're on low economic status and what have you, we
2 actually look at the counselor, the blue and gold officer,
3 their personal statement, for example, or the explanation they
4 may be providing to help quantify what it is they put down.

5 For example, if they say they're -- we get some that say
6 they're on social security or WIC, food stamps, and that.
7 That's easy to verify and what have you. And school officials
8 usually will tell us that to complement it.

9 So we look to try to understand what they put on there.
10 But it's not entirely reliable metric.

11 Q. And based on your experience at the admissions office, how
12 typical is it for you to see examples of income that seems
13 inconsistent with the applicant's parents' occupations?

14 A. It's common.

15 Q. Does the Naval Academy typically receive information about
16 an applicant's family wealth through the sources of information
17 reflected on Slide 20?

18 A. No.

19 Q. No? Okay.

20 Does the Naval Academy consider all of the socioeconomic
21 information when evaluating applicants?

22 A. Yes.

23 Q. How does the Naval Academy consider socioeconomic
24 information provided by an applicant?

25 A. Again, it's an entire review of their application file.

1 So it oftentimes will start with what they've put down, but,
2 again, we look at the personal statement. There's plenty of
3 places they can identify it on their personal history, which
4 might include overcoming hardship, believe it or not, or
5 unusual life experience.

6 And, again, the English teacher or the math teacher and
7 the counselor will oftentimes identify it. There's a box on
8 the academic information form they can check that says they're
9 a disadvantaged background, which would cause the admissions
10 board to do some further digging and what have you.

11 It also comes from blue and gold officers. One of the
12 things that we want them to do is to get a sense of the
13 candidate and their family background. And oftentimes they'll
14 provide a little summary of what they know about the candidate
15 after talking to them or talking to others in the school and
16 what have you.

17 And then if they've provided letters of recommendation
18 from other people who know them, there's often information in
19 there that'll help us form an opinion or help them form a
20 decision.

21 **Q.** Has the Naval Academy made efforts to admit more students
22 with lower household incomes?

23 **A.** Say that again.

24 **Q.** Has the Naval Academy made efforts to admit more students
25 with lower household incomes?

1 A. Yes.

2 Q. Can you please describe those efforts.

3 A. There's a lot of different efforts, one of which is, in
4 our outreach programs, both -- particularly in three areas --
5 the Candidate Visit Weekend, STEM, and summer seminar -- we
6 admit students -- we will ask them -- you know, we accept them,
7 we'll tell them what the fee is, and we'll ask them for
8 information and what have you. And oftentimes the staff will
9 call the kids personally.

10 And we end up giving them scholarships because they'll
11 provide their tax returns, for example, or other information
12 from the school. When they apply to all three programs, we
13 often get recommendations from school officials and the blue
14 and gold officers. And they'll tell us up front if there's a
15 financial challenge with any of the students and what have you.
16 So it starts with those programs.

17 But the other thing, it has to do with our staff. And,
18 again, a lot of these underrepresented congressional districts
19 are in areas where there are -- where a lot of disadvantaged
20 candidates are, where there's low family income, and our staff
21 will help identify those when they travel and they meet them.

22 Five -- we have five billets in the major cities --
23 Houston, Chicago, Los Angeles, Atlanta, and New York. And the
24 lieutenants that we have assigned there are assigned to go look
25 in these areas and to get into the schools and talk to the

1 students and their parents as well. And they will -- by doing
2 that, they often identify students in those particular areas as
3 well.

4 And more recently, we've stood up another outreach program
5 called Inspire, which is a minority-focused weekend which we
6 pay for. But by being able to talk to the student who's
7 attending the program along with their parent, we'll learn more
8 socioeconomic information about them from that program.

9 Q. Dean, given all those efforts, has the Naval Academy's
10 efforts to admit more students with lower household income been
11 successful?

12 A. No. It's helped inform some admissions decisions, but it
13 hasn't been a determinative factor.

14 Q. Dean Latta, it has been suggested by plaintiff's expert
15 that the Naval Academy should give even more weight to lower
16 socioeconomic status and that this would be a way to increase
17 minority enrollment at the Naval Academy.

18 What's your reaction to that suggestion?

19 A. I'm sorry. Can you say it one more time.

20 Q. Yeah. It has been suggested by plaintiff's expert that
21 the Naval Academy should give even more weight to lower
22 socioeconomic status, and that this would be a way to increase
23 minority enrollment at the Naval Academy.

24 What's your reaction to that suggestion?

25 A. Well, we ask a ton of information. There's a ton of

1 information on every student that's in their file. And we --
2 and every one of those things can result in either better
3 informing a decision or it can result in adjusting their
4 multiple through points and what have you.

5 So at some point, continuing to add a lot of extra points
6 for SCS, for example, might be at the opposite of something
7 else, which means we might overlook somebody who is not ready
8 to attend the school and what have you.

9 Again, we have a lot of information. A lot of these
10 race-neutral factors that they had suggested, we already
11 account for that in our scoring system as well. But it's also
12 done in the context we're trying to produce leaders and people
13 that have potential to succeed in our program.

14 So just arbitrarily giving them points because of SES
15 status is not -- it's just not going to be a balance for us.

16 Q. Dean Latta, in your opinion, what, if anything, would be
17 sacrificed in the admissions process if the Naval Academy
18 provided greater consideration to a lower socioeconomic
19 background?

20 A. Well, I think there would be something else that would be
21 offset in all that.

22 Q. What's that?

23 A. Well, again, it might be somebody in the same neighborhood
24 who has a much stronger file, and we would take the person with
25 the low SES status just because they're low SES status.

1 Q. Let's take a look at Slide 22. Now, the first bullet
2 here -- and I believe you talked about this with my
3 colleague -- is unique life experiences.

4 Do you see that?

5 A. Yes.

6 Q. And there are three subbullets here. And can you just
7 explain what the unique life experiences factor is intended to
8 encompass.

9 A. Again, it's part of what we discussed earlier. We're
10 trying to get a complete picture of every candidate and not
11 only their moral development and maturity, but also their --
12 you know, what is it that they have as their qualities for
13 developing into an officer in the Navy and the Marine Corps?

14 So -- and, again, we are developing people who are going
15 to be leading in a diverse officer corps, a diverse military,
16 and going into areas of the world where there's not a whole lot
17 of Americans there; so getting these -- getting a lot of these
18 students in here or looking at these qualities all help us
19 inform a decision on somebody who might be a better officer
20 after graduation.

21 Q. Now, Dean Latta, my colleague asked you to read or just
22 read to you the second bullet point, "Ethnic heritage, racial
23 and ethnic diversity."

24 A. Right.

25 Q. But I want to ask you a slightly different question. You

1 had stated earlier that race is not a basis for making a
2 qualification determination, correct?

3 A. Correct.

4 Q. Given that statement, then, what is the second bullet
5 point in DX79 on Slide 22 intended to convey?

6 A. I think -- again, this was a PowerPoint presentation given
7 to our admissions board. I think it was meant -- you know, it
8 was meant to ensure the board is looking at the person's
9 background and their cultural heritage and the qualities that
10 they bring that comes with it on not just the basis of race and
11 ethnicity alone; it also is the -- the discussion was -- is
12 that -- to try and evaluate the impact of their background on
13 their moral upbringing and development.

14 Q. Does the Naval Academy assume that someone of a diverse
15 background necessarily has significant adversity or hardship?

16 A. No.

17 Q. The next bullet here talks about familiarity with the
18 Academy and the naval service?

19 A. Correct.

20 Q. Why is that relevant in making a decision about an
21 applicant?

22 A. Well, probably different than a lot of other schools.
23 These are sometimes referred to as what I call legacy
24 candidates and what have you. But a lot of these students in
25 this particular category are students that have grown up in a

1 military family that have -- had to endure hardship through
2 moves, deployments, other family issues, and what have you.

3 And they often -- and they're a value to us because
4 they're more -- they oftentimes have a strong motivation to
5 serve, but they know what they're getting into and what have
6 you.

7 So they -- again, they're familiar with the Academy. And
8 the naval service is about -- about understanding the type of
9 person that we're trying to develop and become an officer in
10 the Navy and the Marine Corps. So they do have a value. It's
11 not the end-all, the be-all for everything. Again, other
12 qualifications are important, but it is important to look at
13 people that have experiences.

14 I grew up in a family; I moved three high schools; I lived
15 overseas twice and what have you. And I think that some of
16 the -- my moving around the country in three different school
17 systems and three geographically different areas, I learned a
18 lot before I got to the Naval Academy just about the
19 differences in the country. But I also lived overseas, and I
20 saw a lot about the rest of the world. And that was all
21 because of my affiliation in the naval service through my
22 father.

23 Q. Now, am I correct that one RAB adjustment that may be made
24 to the whole-person multiple is legacy status?

25 A. That's correct.

1 Q. I want to turn back to DX1 again quickly. This is the one
2 that we're not going to put on the screen. This is the
3 guidance concerning the RAB adjustments. And I want to draw
4 your attention to paragraph F on the page ending in Bates 73.

5 And I want to direct your attention to the page 4 of the
6 document where there's a heading "Legacy." Do you see that?

7 A. Yes.

8 Q. Does this define who can receive a legacy RAB?

9 A. Yes.

10 Q. Is the legacy RAB limited only to applicants with a parent
11 or sibling who attended one of the service academies?

12 A. No.

13 Q. Now, this guidance states that the legacy RAB applies to
14 anyone whose parent is currently on active duty in the U.S.
15 military.

16 Is that an accurate statement of who the legacy RAB can
17 apply to?

18 A. I'm sorry. Say the question one more time.

19 Q. The guidance states that the legacy RAB applies to anyone
20 whose parent is currently on active duty in the U.S. military.

21 A. That's correct.

22 Q. Okay. Now, it goes on to state that "Candidates growing
23 up in a military family most likely experienced the culture and
24 pressures associated with a military lifestyle; i.e.,
25 deployments, family separation, transient lifestyle, et cetera.

1 Therefore, we assume that they are making a more informed
2 decision to seek a similar lifestyle than candidates without
3 such experience and credit them with extra points, normally one
4 RAB, in their multiple."

5 Dean Latta, does this accurately describe the rationale
6 for applying a RAB for applicants whose parents or siblings
7 were in the military or the service academies?

8 A. Yes.

9 Q. Why is it important, in your opinion, to provide a RAB
10 adjustment for legacy status as the Naval Academy defines it?

11 A. Again, we're looking for a well-rounded brigade of
12 midshipmen with different experience and what have you. I
13 think this is a cohort of students that has those experience.
14 They bring it into the student body. They share it with the
15 other students that are there.

16 Oddly enough, in an incoming class only about 5 percent to
17 6 percent on average are actually sons and daughters of Naval
18 Academy graduates; and we usually have a higher number,
19 probably up to about 8 or 9 percent, who have been credited for
20 legacy status.

21 Q. Let's go back to DX79. That is your training slide deck.
22 And we are almost done with our training for the day.

23 Let's look at Slide 22.

24 A. Yes.

25 Q. And I want to look at the last bullet now, "Candidates

1 from underrepresented districts." Now, we've circled this
2 issue a few times, but I want to ask you a very specific
3 question now.

4 Based on your experience, what is your understanding as to
5 why there are underrepresented districts?

6 A. Well, I'll tell you one of bigger issues now is coming out
7 of COVID. What we're finding through a number of DoD surveys
8 is a lot of America's youth lack the propensity to serve.

9 There's only about 2 percent of the American population that is
10 qualified and is propensed to serve. It is more pronounced in
11 areas that don't know about the Naval Academy. Almost every
12 one of these districts, it's a lack of awareness.

13 When you go into the schools, there is the constant of the
14 gatekeepers between influencers. And oftentimes it's the
15 parents and the counselors, that even if the student is
16 interested, they're pushing them to go to a different school or
17 a different area. They don't understand the military. They've
18 been getting fractured media messages on social media through a
19 number of surveys that have been presented.

20 And so the interest in these districts is low, and we have
21 to work extra hard to get just a few candidates in there. Many
22 of these districts have large diverse populations in there.
23 And some of them, the populations are suspect of the military.
24 That's why it's important, when we can, to get them to come to
25 a program like Inspire or to the Naval Academy, and then we

1 actually work harder on all the influencers and their parents
2 to get them to understand what's going on.

3 But there's low interest. The schools oftentimes are
4 poor-performing schools -- I won't say poor performing, but
5 they have a weaker curriculum and what have you.

6 But the congressional members themselves, even though they
7 will nominate, oftentimes are distracted by other socioeconomic
8 factors in their districts. So they don't particularly -- even
9 though they're aware of the Naval Academy or West Point or one
10 of the other schools, their attention is drawn to other issues.

11 I've had several members of Congress actually tell me
12 that, that, Look, I've got a lot of other things to worry. If
13 somebody comes to my office, I'll nominate them, but I don't
14 have the staffing to help you.

15 Q. Before we completely beat the whole-person multiple into
16 the ground, I just have a few more questions before we move on.

17 You had mentioned that one issue the admissions board can
18 consider is character issues, correct?

19 A. That's correct.

20 Q. And am I correct that character issues can be considered
21 within the whole-person multiple?

22 A. They're not actually a component of the whole-person
23 multiple; they're part of the whole-person evaluation.

24 Q. So does it tend to be the case that the admissions board
25 is considering character issues outside of the whole-person

1 multiple when making qualification recommendations?

2 A. That's correct.

3 Q. Do you know how frequently the admissions board considers
4 character issues outside of the whole-person multiple?

5 A. It's quite common, but, you know, we actually do a
6 character assessment on every candidate. But when the issues
7 come up, they're very common.

8 Again, you have students that are matriculating that are
9 teenagers, and a lot of them make mistakes. And so it's a
10 great plus for them that they report -- we ask them if they've
11 ever been suspended from school, for example, or they've been
12 cited or arrested and what have you. And it's great when they
13 report it and we have an ability to evaluate it. But
14 oftentimes we learn about it from somebody else and what have
15 you.

16 And I know I mentioned a case earlier, plagiarism, but it
17 can be anything from a hit-and-run accident to underage
18 drinking, use of illegal drugs, and that type of thing. It's
19 quite common to see students -- but, again, they're teenagers
20 that are not perfectly formed individuals. Even the ones that
21 are ranked high in the class oftentimes make mistakes.

22 Q. Can you think of the converse, Dean Latta, where there was
23 a positive character attribute that the board considered that
24 was not encompassed in the whole-person multiple?

25 A. Sir, I mentioned earlier today about the Marine. We've

1 had people that have gone out of their way to help somebody who
2 was in distress and what have you. I've had students -- for
3 example, we had a student last year that lost all of her
4 friends because she reported cheating among members of her
5 sports team to one of the school officials. And she learned
6 great value out of that, learning to stand up for herself and
7 do the thing right when others were not doing it and what have
8 you. And that was very much of a plus at the admissions board.

9 Q. You had mentioned earlier that teacher recommendations are
10 often provided in the context of the application; is that
11 right?

12 A. That's correct.

13 Q. Are there circumstances where a candidate's teacher
14 recommendation may contain information that conflicts with
15 other information in that candidate's file?

16 A. Sure.

17 Q. What kind of example can you think of where that happens?

18 A. Well, it can work both ways. You know, in some cases
19 we'll have -- everything looks great in the file, and then
20 we'll have one teacher that will provide comments that are out
21 of sync with what we've heard from the other teacher, the blue
22 and gold officer, and sometimes midshipmen and other letters
23 recommendation. And we do look at that very strongly. That
24 might be a negative. For example, they don't think the student
25 is working very hard in the class and what have you.

1 So -- and, again, we'll look at the transcript and the
2 grades and the curriculum and that type of thing. That's
3 usually where we find something like that and what have you.

4 But they also sometimes -- you know, it's like everything
5 else in life. You sometimes see personality conflicts between
6 the teacher and the student and what have you. I also find
7 that teachers, just like everybody else sometimes, don't know
8 their students very well. Student's got stuff going on at home
9 and they're having to deal with other issues outside of class,
10 and they don't always articulate them well with the teachers.
11 And so sometimes the write-up is a little bit inconsistent.

12 Q. That same dynamic where there could be an inconsistency
13 between the teacher recommendation and the other information in
14 the file, does that same situation occur with the blue and gold
15 interview notes?

16 A. It can. And, again, sometimes I -- the classic example is
17 we had a student that comes to our summer program and the
18 midshipman will write an evaluation of them in that summer
19 program, and they'll think they're the next Arleigh Burke or a
20 General MacArthur or whatever and what have you.

21 And then the blue and gold officer will turn around and
22 say I don't think they're a good fit for the Naval Academy
23 based on some criteria the blue and gold officer has used in
24 their thing. And sometimes that's -- it can be a disconnect in
25 response. It can -- actually, is oftentimes culture.

1 I found blue and gold officers with the different --
2 believe it or not, with racial and ethnic heritages. They
3 don't read body language well. There's poor communication
4 because of the differences in the student and the blue and gold
5 officer and what have you. And so we sometimes get something
6 that's inconsistent there with other information we have.

7 Q. So when you have these inconsistencies, how are they
8 resolved? What's the process for resolving them?

9 A. Well, it'll start oftentimes with the admissions board who
10 will look at it. And they'll try to make an assessment of what
11 they think. They certainly will look at every piece of written
12 information about them in the file. And particularly with blue
13 and gold officers, we'll sometimes go back and ask for a
14 recommendation from a different blue and gold officer.

15 We go back to the teacher or the school official and ask
16 them to clarify information that they provided. We'll also
17 offset that with other written words we have about them, which
18 can come from not only the counselor or the teacher, but it
19 might be other school officials that have written letters of
20 reference in their particular case.

21 Q. I want to turn to Slide 26 of your slide deck. And this
22 slide here reflects the various options the admissions board
23 has, correct?

24 A. That's correct.

25 Q. Can you describe for the Court what these options entail.

1 A. Yeah, I think we talked a little bit earlier about what
2 qualified means.

3 Q. Correct.

4 A. And then -- and, again, there's a subset of qualified
5 called early notify. And those are the students that the board
6 has recommended we consider for an LOA. A conditional offer of
7 appointment would be another term to use. And if they have a
8 nomination, of course, then that might be a recommendation for
9 a fully qualified offer. Again, they're just making the
10 recommendation. It's up to the staff to determine what to do.

11 They can also recommend them to be not qualified. And,
12 again, part of that is preparatory school consideration. But
13 defer is actually a fairly common board action that they'll put
14 on, particularly in the fall. Oftentimes we're conflicted on
15 what to do with a candidate; so we'll defer the record for more
16 information. It might -- to get them to retake the candidate
17 fitness assessment. It might be to get a new transcript, to
18 counsel the student to retake the college entrance exams.

19 It might be what we just talked about with teacher
20 recommendations, the blue and gold officer interviews, to go
21 back and get additional information. Again, part of the reason
22 for doing all this is we want to be extremely thorough in
23 looking at every candidate; so getting more information helps
24 us in forming an opinion.

25 Q. Now, Dean, am I correct that one other option is to place

1 a candidate on the wait list?

2 A. Yes. That's not really done via the admissions board, but
3 it's done by the slate review staff.

4 Q. That's exactly what I was going to ask. Who makes the
5 decision to put someone on the wait list?

6 A. That's done by me in conjunction with our slate review
7 committee.

8 Q. And what factors do you and the slate review committee
9 consider in deciding whether to place an applicant on the wait
10 list?

11 A. Well, the driving factor are -- number one, is, again,
12 congressional -- filling congressional districts with qualified
13 candidates. And, again, congressional districts, if you don't
14 fill them, they don't go away; they come back next year and the
15 year after and the year after. So keeping them filled or as
16 many as you can fill as possible is the most important thing we
17 have to do.

18 We also have the consideration of the qualified alternates
19 list that has to be filled by law with the top 150 that are not
20 designated as congressional slate winners.

21 But after that, we look at other things. You know, of
22 course the athletic department always has athletes that they
23 wanted us to admit that we didn't initially have room in the
24 class. So some of those get on the list.

25 There are some candidates that are of interest to the

1 superintendent that, after reviewing their file, that they
2 don't necessarily want to offer an appointment, but they want
3 to at least give them some additional consideration via the
4 wait list.

5 And then there's sometimes some highly qualified minority
6 candidates that don't meet any of the other criteria that might
7 get in and be put on the wait list.

8 Q. So we talked about putting people on the wait list. Let
9 me now ask you about taking people off the wait list.

10 A. Right.

11 Q. May race or ethnicity be a factor in deciding to take a
12 candidate off the wait list and extend an offer?

13 A. It can be a consideration. It's a nondeterminative.
14 Again, it's a holistic factor. Again, our primary reason for
15 pulling people off the wait list always has been offering
16 congressional vacancies because that's the most important thing
17 we have to do.

18 Q. In your experience, I guess now over 20 years, in the
19 admissions office, how often does the applicant's race inform
20 the decision to take someone off the wait list and extend that
21 applicant an offer?

22 A. It's pretty rare.

23 Q. Now, Dean Latta, are you familiar with the concept of
24 high-interest candidates, or HICs?

25 A. Yes.

1 Q. Can you briefly describe what a high-interest candidate
2 is?

3 A. Yes. It's a list I maintain each year of candidates that
4 I develop to keep the superintendent informed because there may
5 be people that have written letters of recommendation or have
6 called him or her or have notified our office that are
7 interested in supporting a student for admission. Oftentimes,
8 those are flag officers.

9 We've had politicians on there. There have been other
10 well-informed people that have access to the superintendent
11 that have put their names -- that have shown interest in a
12 candidate.

13 So the list is really -- again, it's a list I use to brief
14 the superintendent so that he knows -- and, again, part of the
15 reason for doing the list is because, if they had called on
16 somebody, they have some information that they can talk to the
17 proponent about on the particular candidate.

18 Q. Now, do you provide the superintendent with any guidance
19 concerning candidates on the high-interest candidate list?

20 A. Yeah. My guidance is always to tell them to stay out of
21 the process and let the process take care of itself. And most
22 of the time, flag officers and others, when they are engaged
23 with a candidate, they find a well-qualified candidate who
24 naturally will get an offer of appointment because they're the
25 person we would offer as a slate winner or as a qualified

1 alternate, et cetera.

2 Q. Does the superintendent typically follow your guidance?

3 A. Most of the time.

4 Q. Does being on the high-interest candidate list provide an
5 admissions advantage?

6 A. No.

7 Q. To what extent does race or ethnicity influence who is
8 placed on the high-interest candidate list?

9 A. It does not.

10 Q. I want to go back to this slide, DX79, page 26. And under
11 "Qualified," there is the subbullet, "Eligible for an early
12 offer of appointment."

13 Do you see that?

14 A. Yes.

15 Q. Now, may the admissions board consider race or ethnicity
16 in making a decision about eligibility for an early offer of
17 appointment?

18 A. It's one of the constellation of factors they can look at.

19 Q. Now, is the board given any guidance as to how it should
20 consider race in making a recommendation for early notify?

21 A. Well, again, they -- they're tasked with looking at the
22 whole record. So they're looking at the diverse experiences;
23 they're looking at the language skills; they're looking at
24 their overall academic prowess, their leadership, overall
25 qualities for admissions and where they fit in to becoming not

1 only midshipmen but an officer in the Navy or Marine Corps
2 after graduation.

3 So part of that is not just the fact that they may
4 self-identify as somebody who is a minority candidate, but they
5 also have other experiences in there that provide context to
6 their overall application.

7 So the guidance is that that's not a good enough criteria
8 alone. They have to look at other things in the file.

9 Q. Let's take a look back at P28, which is the
10 superintendent's guidance. And I want to focus now on a
11 slightly different part of that. I believe you talked about
12 this portion with my colleague.

13 So let's get P28 back up. And we're going to go to the
14 Bates ending in 154, paragraph 5. So the third page of the
15 document.

16 Now, if we go at --

17 A. Paragraph 5?

18 Q. Paragraph 5, yeah. We're going to the -- I want to focus
19 on the last sentence; so I think it's on the next page. We are
20 very close. There we go.

21 I'd like to look at the last sentence of this paragraph.

22 A. Okay.

23 Q. Now, here it says, "However, at no point during the
24 admissions process should race, ethnicity, or gender be the
25 basis for 'points' in favor or against an applicant. Such

1 factors may only be considered as one of many nondeterminative
2 factors in the applicant's file."

3 Do you see that?

4 A. I do.

5 Q. Dean Latta, is that the guidance given to the admissions
6 board with respect to early notify?

7 A. Yes.

8 Q. In your experience working with various admissions boards
9 over the past 20 years, does the admissions board follow this
10 guidance?

11 A. Yes.

12 Q. In your time working with the admissions board, have you
13 seen members of the admissions board assign points based on an
14 applicant's race or ethnicity?

15 A. No.

16 Q. Now, once the board recommends that an applicant is
17 qualified, what happens next? Where does it go?

18 A. Well, it -- obviously, after the board vote -- are we
19 assuming there's a determination by the board result -- it goes
20 into an electronic file to be looked at on the nomination list,
21 which typically are congressional slates.

22 Q. In other words, it now goes to the slate review committee?

23 A. That's correct.

24 MR. GARDNER: Your Honor, I am happy to launch into
25 the slate review committee now or --

1 **THE COURT:** No. Why don't we stop for the day. Hold
2 on one second.

3 **MR. MORTARA:** Your Honor, I have something when you
4 have a moment.

5 **THE COURT:** Hold on one second.

6 All right. Mr. Latta, you may step down. You'll come
7 back to the witness stand tomorrow at 10:00, Dean Latta; so you
8 should not really be discussing your testimony with anyone when
9 you step down and when you leave here this evening.

10 Yes, Mr. Mortara?

11 **MR. MORTARA:** Your Honor, the plaintiffs have a motion
12 occasioned by some testimony that was elicited by Mr. Gardner
13 of Dean Latta. I think it would be Your Honor's preference if
14 Dean Latta left before --

15 **THE COURT:** That's fine. That's fine. We can deal
16 with this -- he can be excused. They'll make sure he's clear
17 he can't talk with anybody when he steps off the witness stand.

18 Dean Latta, you're allowed to leave early. The rest of
19 the team stays here for a little bit.

20 **MR. MORTARA:** Your Honor, would you permit me to use
21 my phone? I had to take a picture of the rough realtime so I
22 have it in front of me.

23 **THE COURT:** I beg your pardon?

24 **MR. MORTARA:** Can I use my phone while I discuss
25 things with you? Because I took a picture of the realtime

1 transcript, and I'm --

2 THE COURT: That's fine. Okay.

3 MR. MORTARA: So I have it available to me.

4 THE COURT: Go ahead.

5 MR. MORTARA: Your Honor.

6 THE COURT: Why don't you wait. He hasn't left yet.

7 MR. MORTARA: Sorry.

8 THE COURT: You may be seated, Mr. Gardner.

9 MR. GARDNER: Thank you, Your Honor.

10 MR. MORTARA: Your Honor, at the rough realtime, which
11 is the best I've ever seen, at page 194, Mr. Gardner elicited
12 testimony from Dean Gardner [sic] about changes that have been
13 made to the admissions guidance to the board for the 2029
14 cycle. Those trainings would have occurred based on the
15 documents we've seen in this trial just a few weeks ago.

16 We obviously do not have those materials, as far as we can
17 tell. It is -- we are not able to cross-examine this witness.
18 We are prejudiced by the nonproduction of these materials.
19 We'd like to get them. And that's why I'm raising it with you
20 now, because the witness is under oath. Mr. Strawbridge has a
21 redirect tomorrow. I don't know why we don't have these
22 materials.

23 THE COURT: Just give me one second here.

24 MR. MORTARA: I can read the question and answers if
25 you wish.

1 **THE COURT:** I'm looking at my own notes as well. I
2 don't purport for my notes to be anywhere near equal to
3 Ms. Thomas's realtime transcript, but I'm just looking at my
4 notes. I know of what you're speaking. I saw it here a minute
5 ago. Wait a minute.

6 Yeah, I'll find it in my notes. But go ahead. Your point
7 is that with respect -- is that with respect to the SAT scores?

8 **MR. MORTARA:** That is with respect to a new RAB for
9 socioeconomic status. The question was:

10 **"Q.** Dean Latta, in light of those variations that you
11 just described, has the Naval Academy made any changes to
12 the RABs for this admissions cycle?

13 **"A.** Well, the one thing we did do is we -- we realized
14 that we had not done a very good job with identifying
15 socioeconomic status; so we tried to separate that out so
16 it doesn't get conflicted with unusual life experiences or
17 hardship. That would be the one thing that we've done
18 this particular year.

19 **"Q.** So do you now have a separate RAB for this admissions
20 cycle for the socioeconomic status?

21 **"A.** Yes."

22 We need these documents because --

23 **THE COURT:** What documents are there?

24 **MR. MORTARA:** They'd be the board training documents
25 for this 2029 class year so we can ask him about changes that

1 he made.

2 **THE COURT:** All right. That's fine.

3 Yes, Mr. Gardner?

4 **MR. GARDNER:** I think my colleague is presuming that
5 there are training documents out there. I don't know that to
6 be the case.

7 **THE COURT:** Well, if there are -- the point is that
8 there may or may not be. And you can check with Dean Latta.
9 And if there are, they can be turned over.

10 **MR. GARDNER:** Well, that's my question. May I confer
11 with Dean Latta --

12 **THE COURT:** Absolutely. You can't discuss his
13 testimony with him, but you can absolutely check with him and
14 seek to get that information, and that'll be turned over
15 forthwith. So --

16 **MR. GARDNER:** We can do that. If there is documents
17 that exist --

18 **THE COURT:** So I would expect that they'll -- if you
19 could make sure you get that -- give it to Mr. Strawbridge and
20 Mr. Mortara by 9:00 tomorrow morning. We're going to reconvene
21 at 10:00; so you'll have those documents certainly by -- if
22 there are documents, by 9:00 tomorrow morning.

23 **MR. MORTARA:** And to be clear in the nature of my
24 request, there's been a lot of discussion of the board training
25 documents. If there's some changes made, I'd like to see if

1 there were other changes made or not made.

2 And so we saw a big -- 491 is a big pack of PowerPoints
3 that they do for the board. I'd like to see the version of
4 same here.

5 **THE COURT:** That's fine.

6 **MR. MORTARA:** Thank you, Your Honor.

7 **THE COURT:** Mr. Gardner, if you just follow up on that
8 and get that information -- the response -- unless there are --
9 I suspect there have got to be documents in connection with
10 that and --

11 **MR. GARDNER:** I won't make a representation one way or
12 the other, but what I will make a representation is we'll ask.
13 And if they exist, we will get them.

14 **THE COURT:** Okay. That's fine. That's fine.

15 Good for you, Mr. Mortara?

16 **MR. MORTARA:** That's great for us. Thank you, Your
17 Honor.

18 **THE COURT:** Okay. Good. With that, we are concluded
19 for the day, and we'll start again --

20 Yes, Mr. Gardner?

21 **MR. GARDNER:** I was just going to say one thing, Your
22 Honor, just for your benefit.

23 I know this seems a little plodding. I can promise you,
24 though, this will be more meaningful when we hear from
25 plaintiff's experts tomorrow and the next day. So I know it's

1 laborious, and I apologize that it's laborious. But I think it
2 will bear fruit towards the end of this trial.

3 **THE COURT:** All right. Well, we're just at -- both
4 from Mr. -- Dean Latta as well as with the experts, the focus
5 is the matter of consideration of race in terms of strict
6 scrutiny and reasonably being tailored. And to the extent that
7 we go through processes that have nothing to do with race, just
8 generally the process, it's very educational, but we're talking
9 about considerations of race.

10 And so there have been literally 20- and 25-minute clips
11 where we don't even talk about race; we're talking about the
12 general process. And it is very repetitive. I'm just telling
13 you for, the sake of presentation -- it's fine, Mr. Gardner.
14 I'm not hurrying you up at all. But you've brought up the
15 topic, and I'll just tell you.

16 And for that matter, to the extent that an expert opines
17 on what they think about X, Y, and Z, all the way through, I'm
18 trying to focus upon the main issues in this case in terms of
19 considerations of race that survive strict scrutiny.

20 **MR. GARDNER:** Yes, sir.

21 **THE COURT:** And I have a few questions along those
22 lines of this witness once we finish in terms of my asking a
23 few questions as well. But I can wait.

24 **MR. GARDNER:** Thank you, Your Honor.

25 **MR. MORTARA:** Thank you, Your Honor.

1 **THE COURT:** Good enough. With that, we are adjourned
2 for the evening. Thank you all very much.

3 **THE CLERK:** All rise. This Honorable Court is
4 adjourned for the day.

5 (Court adjourned at 5:03 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 17th day of September 2024.

Ronda J. Thomas

Ronda J. Thomas, RMR, CRR
Federal Official Reporter

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